

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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J.K.J., Case No. 15-CV-428-WMC

Plaintiff,

vs.

POLK COUNTY and
DARRYL L. CHRISTENSEN,

Defendants.

and

M.J.J., Case No. 15-CV-433-WMC

Plaintiff,

vs.

POLK COUNTY and
DARRYL L. CHRISTENSEN,

Defendants.

Madison, Wisconsin
January 31, 2017
1:30 p.m.

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STENOGRAPHIC TRANSCRIPT OF SECOND DAY OF JURY TRIAL
AFTERNOON SESSION
HELD BEFORE CHIEF JUDGE WILLIAM M. CONLEY

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(Called to order at 1:30 p.m.)

THE COURT: You may proceed, Counsel. Please proceed.

MR. WEIDNER: Your Honor, I believe I had rested.

THE COURT: So that would be cross-examination --

MR. CRANLEY: Thank you, Your Honor.

THE COURT: -- or really direct examination. As you've probably already seen, a number of these witnesses are being called adversely. And this is now direct exam, which the County is allowed to do in the plaintiff's case, just as he has -- or they have with other witnesses. You may proceed.

DIRECT EXAMINATION

BY MR. CRANLEY:

Q. Mr. Moe, can you remind us again about your history in the law enforcement profession?

A. I started part time for the Polk County Sheriff's Department in 1982. And I worked in a part-time capacity extensively until 1987, when I was given a permanent position in the patrol division. I worked patrol and investigations until 1991, when I was promoted to chief deputy. And I remained in the position of chief deputy until March of last year when I retired.

Q. In your role as chief deputy, did you ever have direct oversight of the jail; in other words, were you ever in charge of the day-to-day operations of the jail?

A. I wasn't necessarily in charge of the day-to-day -- oh, I'm sorry. I was early in my -- after receiving appointment of chief deputy on a couple of occasions. There was a vacancy as jail administrator and I performed that function until a replacement could be found. And I did that again several years later. So early in my career I had day-to-day responsibility, but generally in my career I had oversight responsibility for the jail administrator.

THE COURT: So what would those two periods of time have been roughly?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Just roughly, when would they have
3 been?

4 THE WITNESS: Roughly a half of a year on each
5 time.

6 THE COURT: When you said "early in your career,"
7 you're talking about what period of time?

8 THE WITNESS: In the early to mid 90s.

9 THE COURT: Thank you. You may proceed, Counsel.

10 BY MR. CRANLEY:

11 Q. And if you could scooch closer to the microphone.

12 A. Sure.

13 Q. Thank you. You were asked some questions about your
14 involvement with the promotion of Scott Nargis to jail
15 captain. Do you recall your testimony?

16 A. Yes.

17 Q. And I think you mentioned he had been acting jail
18 administrator for some time?

19 A. Yes.

20 Q. And remind us of the reason for that and how long he
21 was acting in that role.

22 A. I don't recall exactly how long, but it was
23 extensive. I would say it may have even been up to a year
24 or quite a while, anyway. And he was acting jail
25 administrator because the jail administrator had a severe

1 illness and was off work.

2 Q. Did his performance in that role as acting jail
3 administrator play into the decision to hire him as the --
4 or I'm sorry, promote him to captain?

5 A. I'm certain that it did.

6 Q. You were asked about the training program that is
7 primarily devised by Captain Nargis, correct?

8 A. Yes.

9 Q. Are you aware of whether that program is reviewed at
10 all by the State of Wisconsin, Department of Corrections?

11 A. I believe it is.

12 Q. And has it been approved by the State of Wisconsin,
13 Department of Corrections?

14 A. I don't want to give you the wrong answer. Are you
15 asking me about the policies, the jail policies, or the
16 training?

17 Q. I was asking about the training.

18 A. Oh, training. You know, I don't believe that there
19 is a specific training program that is dictated by the
20 State of Wisconsin. I believe that their training is
21 generally corrections or jail related. There may be some
22 subjects that are mandatory for the jail, but I don't
23 think that it by and large is all dictated.

24 Q. Certain subjects are required to be covered in that
25 training for recertification purposes?

1 A. I believe so.

2 Q. And with respect to policies, are those policies
3 reviewed by the Department of Corrections?

4 A. I believe they are.

5 Q. And have the Polk County policies and procedures for
6 the jail been approved by the Department of Corrections?

7 A. I'm certain that they are.

8 Q. I want to talk to you a little bit about the
9 Jorgenson investigation. You indicated that you were
10 brought into the investigation by Captain Nargis on the
11 Monday after he'd received the report of the claim,
12 correct?

13 A. Yes.

14 Q. And that you were involved in some interviews with
15 Captain Nargis?

16 A. Yes.

17 Q. Do you recall about how many people were interviewed?

18 A. A handful. I'm going to say four or five, maybe
19 more.

20 Q. And who were those people?

21 A. They were female inmates that occupied the same cell
22 block as NS.

23 Q. And what kind of information did you get from them?
24 Was it consistent?

25 A. Well, it was not consistent.

1 Q. Can you describe some of the responses that you got
2 from them in interviewing them about the incident that NS
3 had reported?

4 A. Well, I probably can't tell you who said what. But I
5 know that our information that we received was
6 inconsistent in the sense that some of the inmates
7 suggested that there's nothing -- there was no friendship
8 or favoritism going on and some said yes that there was.

9 In fact some suggested that there was hand-touching
10 or, I believe in one case, some suggested that Jorgenson
11 touched the inmate's butt. And there was a number of
12 allegations that were made and then there was a number of
13 that said no, there was nothing going on.

14 Q. Did one or more of those inmates say that they did
15 not believe that there was any physical relationship
16 between Jorgenson and the inmate NS?

17 A. Yes, I believe so.

18 Q. You mentioned that when you reached a conclusion in
19 that investigation you believed that Jorgenson had
20 fostered a relationship with the inmate; do you recall
21 that?

22 A. I do.

23 Q. Was that -- did you believe that he had fostered a
24 sexual relationship with that inmate?

25 A. No. I believe he fostered a friendship relationship.

1 Q. Can you explain what it was that you believed had
2 been the nature of that relationship?

3 A. Well, we believed that Allen had given undue, unfair
4 or simply too much attention to one of the female inmates
5 and that would be NS.

6 Q. And at the time you made your disciplinary decision
7 to write a letter of reprimand, you had not yet heard from
8 inmate NS that she changed her story, correct?

9 A. That's correct.

10 Q. And what, if anything, did you do to investigate
11 further once you received that letter in which she changed
12 her story?

13 A. I think most significantly perhaps the only thing was
14 to get back together with the Sheriff and I and Captain
15 Nargis and reevaluate and relook at the situation and look
16 at NS's letter and re -- take a whole fresh look at the
17 entire situation.

18 Q. And what conclusion did you come to after taking that
19 fresh look?

20 A. Well, we came to the conclusion that we were going to
21 maintain our original letter -- our original discipline
22 against Allen -- against Mr. Jorgenson.

23 Q. Why did you believe that was the appropriate level
24 discipline to give him?

25 A. Well, it's where our comfort level lied and that we

1 felt that we may have had a difficult time proving
2 anything other than that. We considered Mr. Jorgenson's
3 previous work history. We just felt that newer
4 circumstances didn't significantly change the situation
5 and we maintained the level of reprimand for that
6 discipline.

7 Q. Did you believe you had evidence on which you could
8 conclude that in fact there had been improper touching by
9 Jorgenson of inmate NS?

10 A. No.

11 Q. Why not?

12 A. Just based on the credibility of everybody who was
13 interviewed and people that we spoke to. It was very
14 difficult. It was very difficult to know who to believe
15 and how much weight to put on each individual person that
16 we interviewed.

17 Q. Why didn't you call DCI or some other outside
18 investigating body to pursue criminal charges?

19 A. Well, we didn't believe that we had sufficient
20 evidence that would support a criminal charge.

21 Q. And how many years have you been in law enforcement?

22 A. Well, altogether, since 1982.

23 Q. You were asked about a comment in the file that a
24 letter of reprimand was not a major deal. Do you recall
25 that testimony?

1 A. I do.

2 Q. Can you explain what you meant by that comment?

3 A. Well, in the summary of the report it indicates that
4 either I or Captain Nargis or one of us, or perhaps both,
5 suggested to Allen that a letter of reprimand was not a
6 big deal. But we had just concluded an investigation that
7 was stressful for Allen, it was stressful for us, it was
8 stressful for the inmates and for the co-workers and we
9 wanted to put that issue to rest.

10 After having confronted Allen, we felt that it was
11 important that we recognize and support Allen's prior work
12 history. He was a good employee. He was a go-to
13 employee. We appreciated his efforts and his work, so we
14 wanted to salvage him as an employee. He had, prior to
15 that, a good work record.

16 And we wanted Allen to know that, yes, you have
17 discipline on your record and it's -- it will follow you,
18 but a letter of reprimand is not the end of the world.
19 With your work record and you try hard and work hard, you
20 can recover from discipline in your file. So in that
21 sense, a letter of reprimand wasn't a big deal.

22 Q. Had you ever had occasion to investigate, prior to
23 the Jorgenson investigation, another incident of alleged
24 improper touching by a jail officer of an inmate at Polk
25 County Jail?

1 A. No.

2 Q. And up until the time of the investigation of
3 Mr. Christensen, did you have any other occasions to
4 investigate improper touching allegations of that nature?

5 A. No.

6 MR. CRANLEY: Nothing further. Thank you.

7 THE COURT: Any questions for this witness?

8 MS. MILLS: No, Your Honor.

9 THE COURT: Recross?

10 CROSS-EXAMINATION

11 BY MR. WEIDNER:

12 Q. You said that you wanted to recognize Allen's prior
13 work history with the Polk County Jail, is that correct,
14 the letter of reprimand?

15 A. Yes.

16 Q. And is that why -- is a letter of reprimand the least
17 severe disciplinary action that Polk County has?

18 A. A verbal reprimand is considered the least form of
19 discipline.

20 Q. This is one step up, is a written reprimand?

21 A. Yes, sir.

22 MR. WEIDNER: No further questions.

23 THE COURT: All right. You may step down then.
24 Thank you.

25 THE WITNESS: Thank you, Your Honor.

1 (Witness excused at 1:46 p.m.)

2 THE COURT: And the plaintiff may call its next
3 witness.

4 MR. WEIDNER: Captain Scott Nargis.

5 THE COURT: I think you're discharged. There's
6 no need for Mr. Moe to stick around? You're discharged.
7 Thank you, very much.

8 THE WITNESS: Thank you.

9 THE COURT: As you've obviously figured out,
10 Captain Nargis is one of those who are a sequestered
11 witness. You can come straight forward. Either way is
12 good, actually. And just come around here and stand
13 before the court reporter, who will swear you in.

14 **SCOTT NARGIS, PLAINTIFFS' WITNESS, SWORN**

15 THE COURT: You may proceed.

16 MR. WEIDNER: Thank you, Your Honor.

17 THE COURT: If you would just slide forward near
18 the mic, it makes it easier for the reporter.

19 AVERSE EXAMINATION

20 BY MR. WEIDNER:

21 Q. Mr. Nargis, you were first hired with the -- do you
22 mind if I call you *Mr. Nargis* or would you prefer *Captain*
23 *Nargis*?

24 A. Either is fine, sir.

25 Q. Mr. Nargis, you were first hired with the Polk County

1 Sheriff's Department in 1998?

2 A. Yes, sir.

3 Q. And when you were first hired, you were hired as a
4 jail officer?

5 A. A dual role of jail and dispatch.

6 Q. What role did you have with dispatch?

7 A. Receiving incoming phone calls to the department, 911
8 calls, dispatching officers, recordkeeping of their calls,
9 fire, ambulance.

10 Q. Would that be in the communications division of the
11 Sheriff's Department?

12 A. Yes.

13 Q. And were you a sworn peace officer?

14 A. No, sir.

15 Q. Have you ever been a sworn peace officer in the state
16 of Wisconsin?

17 A. No, sir.

18 Q. And you went through some initial jail training, jail
19 officer certification training, when you were hired
20 somewhere near 1998; is that correct?

21 A. Yes, sir.

22 Q. And you got your certification?

23 A. Yes, sir.

24 Q. And you've completed all the training processes to
25 maintain a current certification since that time?

1 A. Correct.

2 Q. You were promoted to sergeant, jail sergeant, in
3 2001?

4 A. Yes, sir.

5 Q. And when you were promoted to jail sergeant did you
6 take any additional professional training for any sort of
7 jail administration?

8 A. There was a week-long jail leadership class at the
9 technical college in Rice Lake.

10 Q. And the technical college in Rice Lake, was that when
11 you first started as a sergeant?

12 A. Shortly after I was promoted, yes. I don't recall
13 when specifically.

14 Q. In some of the information there that you were given
15 were principles of subject control from an instructor; is
16 that right?

17 A. No, sir.

18 Q. What did you learn at that one-week school?

19 A. I don't recall the specifics. I do remember
20 particular styles of leadership were covered, a broad
21 range of topics.

22 Q. The training that's provided in the jail is
23 determined -- the subject matter and frequency is
24 determined by you; is that correct?

25 A. Currently, yes.

1 Q. And it has been since you've been jail captain?

2 A. Yes.

3 Q. Do you review the subject matter with any of your
4 superior officers prior to the implementation of those
5 trainings?

6 A. Not usually, no.

7 Q. Is it up to you to determine the schedule or do you
8 review that with a superior officer?

9 A. I'm sorry. Do you mean the training schedule?

10 Q. Yes.

11 A. That's up to me, in part.

12 Q. You brought a lot of the training in -- a lot of the
13 training was brought in-house, is that correct, to Polk
14 County?

15 A. It's done in-house, the majority of it, yes.

16 Q. And you are an instructor in three different areas;
17 is that correct?

18 A. Currently I'm only certified to instruct in two
19 areas.

20 Q. And what are those?

21 A. Principles of subject control and professional
22 communication skills.

23 Q. You have previously been a Taser instructor?

24 A. Yes, sir.

25 Q. And you no longer have that certification?

1 A. Correct.

2 Q. Who does the Taser training within your department?

3 A. The entire department or just the jail division?

4 Q. Jail division. I apologize?

5 A. Currently it's Officer Stacey Ptacek.

6 Q. And when did you quit operating as the Taser
7 instructor?

8 A. If I'm not mistaken, my certification lapsed last
9 year.

10 Q. So would it have been -- you would have been the
11 Taser instructor up to last year?

12 A. Through 2015, yes, one of them.

13 Q. The other types of training that are given to
14 correctional officers at Polk County are CPR training
15 every two years?

16 A. Yes, sir.

17 Q. You do Taser training every year?

18 A. Yes, sir.

19 Q. You do suicide prevention training every year?

20 A. Yes, sir.

21 Q. You do risk factor identification training every
22 year?

23 A. Yes, sir.

24 Q. Blood borne pathogens every year?

25 A. Yes, sir.

1 Q. Medication distribution every year?

2 A. Yes, sir.

3 Q. And fire safety every year?

4 A. Correct.

5 Q. Are there any others that you can think of right now
6 that you do every year other than that list?

7 A. I believe that is a complete list.

8 Q. Some of the other trainings that you do are handling
9 rule violation procedures?

10 A. Yes, sir.

11 Q. The other training, disciplinary actions of inmates?

12 A. Yes, sir.

13 Q. Cutting down hanging inmates who may have hung
14 themselves in their cells?

15 A. Yes, sir.

16 Q. As well as physical struck practice?

17 A. Correct.

18 Q. Those are not required trainings, correct?

19 A. Correct.

20 Q. The other ones that I referred to are required
21 trainings by the State of Wisconsin certification program,
22 correct?

23 A. No, sir. Some are -- one is required by county
24 policy. That would be the blood borne pathogens. The
25 others are not required by the Training Standards Bureau

1 or the Law Enforcement Standards Board; they're required
2 by the Department of Corrections.

3 Q. So the discretionary trainings, those subject matters
4 are determined by you --

5 A. Yes, sir.

6 Q. -- or the Polk County Jail?

7 A. Yes, sir.

8 Q. You have approximately 20 topics selected and
9 extracted from your policy manual that you do a daily
10 training program on; is that right?

11 A. It's more like 90 topics, sir.

12 Q. Did I say --

13 A. 20.

14 Q. Oh, I'm sorry. I thought I said 90. 90 topics?

15 A. Yes, sir.

16 Q. And those topics, do you maintain a list of what
17 those topics are?

18 A. Yes.

19 Q. And those 90 topics are a revolving number of
20 different policies, correct, that the county jail employs?

21 A. Different sections of the *Policy and Procedure*
22 *Manual*, yes, sir.

23 Q. And that list -- you basically give to someone a
24 calendar that says, "I want you to read these, the
25 following policy sections, and tell me what policy" --

1 "the heading of the policy section," correct?

2 A. They're provided with a calendar. Each day has a
3 number associated with it. There is a shared drive on the
4 county computer system where they have to go into a folder
5 that's associated with that number; say, 25 for example.
6 Once they open that document, yes, they need to place the
7 title -- write the title in the box for that day, read the
8 document and then sign and verify that they have read it.

9 Q. And you have control of that information?

10 A. Yes, sir.

11 Q. Do you know whether or not there was any -- which
12 specific topics were trained on at which specific dates?

13 A. I can go back to the master calendar and discern
14 that, yes.

15 Q. Have you, since the time of this action, gone back to
16 the master calendar to discern that?

17 A. I'm sorry. I don't understand your question.

18 Q. Let's say since the time Darryl Christensen resigned
19 from the Polk County Jail, have you, from today's date
20 back to that date, have you gone through that master
21 calendar in Polk County to determine what subject matters
22 were in fact trained on?

23 A. I didn't specifically set out to do that, but I do
24 that every month when I collect them from the staff.

25 Q. And do you have that information with you today?

1 A. No, sir.

2 Q. Have you reviewed that information in preparation for
3 this trial?

4 A. Not specifically in preparation for this, no.

5 Q. And do you know -- when was the last time you
6 reviewed it?

7 A. It would have been the first part of January to
8 review December's training from the staff.

9 Q. Do you only review the previous month's?

10 A. Yes.

11 Q. Have you gone back and reviewed all of those subject
12 matters that you've trained on since Dale Christensen
13 resigned?

14 A. I review them every month from the previous month.

15 THE COURT: You're saying aside from your
16 standard practice of reviewing it at the beginning of each
17 month, the training of the prior month, have you made any
18 other effort to go back again and look again at any of
19 those materials?

20 THE WITNESS: No, sir.

21 THE COURT: Next question.

22 BY MR. WEIDNER:

23 Q. You attend an annual -- oh, that information that you
24 receive on a daily basis that they fill out or that you
25 check on, that doesn't mean that they actually read the

1 policy, correct?

2 A. They attest to the policy manual itself or to the
3 particular document associated with that daily topic.

4 Q. Well, they particular identify daily policy?

5 A. It's a topic; it's not a specific policy. It is a
6 section out of the different policy areas.

7 Q. All right. But there's no proof that they actually
8 read the content of the policy by that recording process,
9 correct?

10 A. Aside from them signing the bottom of the document
11 verifying that they have, no.

12 Q. Would it surprise you if Mr. Christensen usually
13 didn't read the content of the policies?

14 A. I would be surprised by that, yes.

15 Q. You didn't, in the process of the transfer of your
16 job from one jail administrator to the next, did you
17 receive any training from -- I believe it's Cindy Moore?

18 A. I did not.

19 Q. She's a prior jail administrator?

20 A. Correct.

21 Q. Did you receive any on-the-job training from
22 Deputy Moe?

23 A. Specifically related to transferring into the jail
24 administrator's position, no.

25 Q. You attend annual jail administration conferences; is

1 that correct?

2 A. When I can, yes.

3 Q. And you've done so since approximately 2010?

4 A. Excuse me. Yes, with the exception of October this
5 past year.

6 Q. You did at least through the time that Darryl
7 Christensen resigned from the Polk County Jail?

8 A. Yes, sir.

9 Q. And when you go to those conferences you attend
10 breakout sessions; is that correct?

11 A. Yes, sir.

12 Q. And I think one of the breakout sessions you like to
13 go to is an individual named *Gordon Graham*; is that
14 correct?

15 A. Yes, sir.

16 Q. And Gordon Graham teaches an idea or principle of
17 high-risk, low-frequency training; is that right?

18 A. Yes, sir.

19 Q. And that means that -- I think that things that are
20 low risk aren't generally going to get you in trouble; I
21 think you've said that in the past; is that right?

22 A. Yes, sir.

23 Q. So you train in the high-risk situations?

24 A. High-risk or low-frequency situations.

25 Q. And what would a low-frequency situation be?

1 A. A particular low-frequency situation, which also
2 happens to be a high-risk, would be an inmate suicide
3 attempt.

4 Q. So you train -- you focus training on that?

5 A. That's what the daily training program is designed
6 for, is to focus on those areas of the policy, yes.

7 Q. Sexual assault in prisons you don't determine to be a
8 high risk; is that correct?

9 A. I don't work in a prison, sir.

10 Q. I'm sorry. I stand corrected. I mean your jail.

11 A. I disagree with that statement.

12 Q. You believe that it is a -- do you believe that
13 sexual assault in jails is a high-risk situation?

14 A. Certainly.

15 Q. You also believe it's a low-frequency situation?

16 A. Yes, sir.

17 Q. According to Mr. Graham or that principle, those are
18 the items that you would train on, correct?

19 A. High risk, low frequency, yes.

20 Q. And you focus training on that, on high-risk,
21 low-frequency situations?

22 A. That's what the daily program is intended to do, yes.

23 Q. Have you ever been to -- you are in charge of
24 policies and procedures that go into your jail manual,
25 correct?

1 A. Yes, sir.

2 Q. And your jail manual section C-202 covers
3 fraternization with inmates/PREA; isn't that correct?

4 A. I believe that is the correct policy section, yes.

5 Q. And was it your decision to change, in July of 2012,
6 or revise section C-202 to include the word *PREA*?

7 A. Yes, sir.

8 Q. Now, you are not required by federal law to implement
9 PREA in your jail, correct?

10 A. To my understanding, yes.

11 Q. And you elected to put this section in on PREA; isn't
12 that correct?

13 A. Yes, sir.

14 Q. No one mandated it, no one required it, correct.

15 A. Correct.

16 Q. This is a policy you adopted and initiated within
17 your program, correct?

18 A. Correct.

19 Q. Have you ever had any or been to any specific
20 training on PREA?

21 A. No specific training that I can recall.

22 Q. But you do recall discussions that you had at the
23 regional jail administrators meeting on PREA, correct?

24 A. I do recall that it came up a number of times, yes.

25 Q. And at those meetings -- and for the jury's

1 information, the regional jail administrators meetings are
2 put on by whom?

3 A. I can only speak for the region that we're in, but
4 that has always been facilitated by the jail inspector
5 with the Office of Detention Facilities of the Department
6 of Corrections.

7 Q. And one of the people that -- I believe your jail
8 inspector was Mr. Hompe, correct?

9 A. For a time, yes.

10 Q. He's no longer your jail inspector, but throughout
11 the period of time during these sexual assaults --

12 A. Excuse me.

13 Q. Do you need to get some water, sir?

14 A. I'm fine. Thank you.

15 THE COURT: There is some to your right if you
16 want it.

17 THE WITNESS: Thank you, Judge.

18 BY MR. WEIDNER:

19 Q. The time that we're talking about between 2011 and
20 2014 Mr. Hompe was your jail inspector, correct?

21 A. I don't recall when he started, but I believe that is
22 an accurate statement.

23 Q. And when you went to these regional jail
24 administrators conferences at times they discussed PREA or
25 the PREA standards, correct?

1 A. In a broad sense, yes.

2 Q. Did you ever receive any materials on the PREA
3 standards?

4 A. I don't -- I can't say that I received materials on
5 PREA standards. I have sought out information on PREA
6 myself.

7 Q. Were they offered to you at anytime in your regional
8 jail administrators meeting by Mr. Hompe?

9 A. I don't recall.

10 Q. You're not denying or agreeing to that; is that
11 correct?

12 A. That's correct.

13 Q. Did you ever go to an annual jail administrators
14 conference?

15 A. Yes.

16 Q. Did you receive any information regarding PREA
17 standards at the jail administrators conference?

18 A. Not that I recall.

19 Q. The same thing: you're not admitting or denying,
20 correct?

21 A. Correct.

22 Q. I believe, sir, you indicated previously it was
23 discussed more frequently, meaning PREA was discussed more
24 frequently, near the implementation of PREA, correct?

25 A. Correct.

1 Q. And do you mean by "implementation of PREA," do you
2 mean when those standards were put into effect in 2012?

3 A. Yes, sir.

4 Q. So you were aware that PREA existed prior to its
5 implementation or passing it in 2012, correct?

6 A. In broad terms, yes.

7 Q. You knew it was coming?

8 A. Yes.

9 Q. People had talked about it?

10 A. Yes.

11 Q. In fact were you aware that it was originally enacted
12 in 2003 and they were doing studies and programs up to
13 about 2012?

14 A. I couldn't have told you it was 2003, but I did know,
15 yes, it had been enacted earlier.

16 THE COURT: And when you say "it had been
17 enacted," you mean the statute itself, not the standards?

18 MR. WEIDNER: Correct.

19 BY MR. WEIDNER:

20 Q. And you did nothing to prepare for that
21 implementation, correct?

22 A. That's not correct.

23 Q. So during these frequent conversations, isn't it true
24 that you told me in your deposition that you did nothing
25 to prepare for its implementation?

1 A. I may have said that. But as you just noted, the
2 PREA section was added to the jail policy prior to the
3 standards being enacted.

4 Q. And when were those standards enacted?

5 A. It was August of 2012.

6 Q. When you put those standards, PREA standards, into
7 your policy, had you had any training on how to implement
8 those standards?

9 A. No, sir.

10 Q. Did you provide any training to your staff between
11 the time you put those standards into your policy, PREA
12 standards, and its implementation?

13 A. Specific training, no.

14 Q. Now, isn't it true, sir, that you believe that you
15 can't do all of what PREA standards are out there,
16 correct, you can't implement them all?

17 A. I'd say it's a more accurate statement that I don't
18 believe it's feasible in a small county jail to enact them
19 all.

20 Q. And that, sir, is because of the other budgetary
21 constraints?

22 A. In part, yes.

23 Q. And it is too expensive to implement some of those
24 standards identified in PREA?

25 A. Some, in my opinion, yes.

1 Q. And which standards are those, sir?

2 A. Specifically off the top of my head, having an audit
3 from an outside PREA expert is one of those areas. Just
4 off the top of my head I can't think of anything else
5 right now.

6 Q. Did you designate a PREA officer in your facility?

7 A. No, sir.

8 Q. Would that cost any money --

9 A. I believe so.

10 Q. -- to identify an individual to know PREA?

11 A. To identify them, no.

12 Q. Are there any other standards in PREA that you're
13 aware of that you could not attain due to budgetary
14 constraints at the Polk County Jail other than the one you
15 identified with an auditor?

16 A. Off the top of my head I can't think of it.

17 Q. Did you ever discuss the implementation of PREA with
18 the Sheriff prior to putting it in the policy manual?

19 A. I know we have discussed it. I can't tell you if it
20 was before or after the addition to the policy manual.

21 Q. The Sheriff's time is too valuable to cover each
22 point of PREA; isn't that correct?

23 A. It's a matter of opinion.

24 Q. Didn't you tell me that in your deposition?

25 A. I very well may have, sir. I can't recall

1 specifically.

2 Q. The one training session that you have had regarding
3 PREA was a session that you had in -- for your staff, was
4 in February of 2014, correct?

5 A. Yes, sir.

6 Q. That's roughly 18 months after you put it in your
7 policy manual?

8 A. Yes, sir.

9 Q. And you conducted that training yourself, correct?

10 A. Correct.

11 Q. And you conducted that training without handing out
12 any materials on PREA, correct?

13 A. I believe that is correct.

14 Q. You covered PREA by orally and not showing a
15 presentation, correct?

16 A. I believe that's correct.

17 Q. You don't -- isn't it true, sir, you do not know how
18 long that PREA presentation lasted on February -- in
19 February of 2014, correct?

20 A. That is correct.

21 Q. You did in fact send out an e-mail after that
22 training session, for those that weren't in attendance and
23 for those that were in attendance, to summarize what the
24 training was; isn't that correct?

25 A. Yes, sir.

1 Q. And in fact Mr. Christensen never attended that
2 meeting, did he?

3 A. That's correct.

4 MR. CRANLEY: Your Honor, objection. I think
5 we're -- it seems cumulative at this point and I object to
6 relevance.

7 THE COURT: I'm inclined to agree, but I'll give
8 you some limited leeway to wrap this up.

9 MR. WEIDNER: Somehow this is off.

10 THE COURT: You want that screen on?

11 BY MR. WEIDNER:

12 Q. I'm showing you what's been marked as Exhibit 6.
13 This front page is identified as 636. This is an e-mail
14 that was sent to a variety of jail staff on February 21st,
15 2014; isn't that correct?

16 A. Yes, sir.

17 Q. And you in fact state it's a summary of yesterday's
18 training or "recap," as you state. You identify under the
19 "PREA (Prison Rape Elimination Act)." You identify in
20 that first sentence, it "Seems that everyone is in a tizzy
21 to train their staff on PREA." Sir, who are you referring
22 to when you say "everyone" in that sentence?

23 A. I believe I mentioned to the staff, going off this
24 outline, that I was referring to the other jail
25 administrators in the state that were communicating about

1 it via our closed e-mail system.

2 Q. And when you say "tizzy," do you use that term in a
3 sense of there's a sense of urgency?

4 A. No, sir.

5 Q. How is it that you use that word, sir?

6 A. I use that word to mean that there's a bit of a
7 scramble for, in this particular case, time and attention
8 that seemed to be misplaced.

9 Q. So you identified then that you believed -- you
10 identify you'll hit the basics of PREA training, correct?

11 A. Yes.

12 Q. And who was it that identified those three items
13 beneath it as the *basics*? Is that your synthesis?

14 A. Yes, sir.

15 Q. And you believed the basics to be "Do not
16 allow/condone inappropriate contact between inmates"; is
17 that correct?

18 A. That is one of them, yes.

19 Q. The second one is "Do not allow/condone/engage in
20 inappropriate contact between staff & inmates," correct?

21 A. Yes.

22 Q. And the third is, "If someone (staff or inmate)
23 presents a concern about inappropriate contact, report it
24 to me," correct?

25 A. Yes, sir.

1 Q. That's the extent of the training, correct?

2 A. I can't say whether we spoke any more, if discussion
3 went off on a tangent from those bullet points or not.

4 Q. You can't -- you won't deny or admit that there was
5 any more training, correct?

6 A. I can't say, yes.

7 Q. Have you had discussions with the jail
8 administrator -- excuse me, I'm sorry, the jail inspector
9 regarding PREA standards?

10 A. It has come up in discussions, yes.

11 Q. Has it come up in personal discussions between the
12 two of you or in a general discussion setting?

13 A. Both.

14 Q. Have you read all of the PREA standards that apply to
15 jails?

16 A. I can't recall with certainty if I've read all of
17 them.

18 Q. This e-mail that I had just read or -- strike that.
19 The information that you're providing to your staff on
20 PREA is what was given to you orally by the jail
21 inspector, Brad Hompe; isn't that correct?

22 A. No, sir.

23 Q. And what did you base your training on?

24 A. PREA itself.

25 Q. Sir, you don't recall whether or not you've read all

1 of PREA that applies to your jails, correct?

2 A. Correct.

3 Q. Sir, you also disagree with the safety item of PREA
4 standard, correct?

5 A. Yes.

6 Q. And that safety item is that you don't think it's a
7 safe practice for a guard to announce entry into a cell or
8 something to that effect; is that correct?

9 A. Correct.

10 Q. And are there any other -- that's for safety reasons
11 of the guard, correct?

12 A. Yes.

13 Q. And are there any other safety concerns that you have
14 with PREA standards that you can think of at this point?

15 A. Not that I can think of right now, no.

16 Q. Do you know whether or not it's a principle of the
17 PREA standards to give information to incoming inmates in
18 the jail?

19 A. I believe it is.

20 Q. And to identify that they should be free from sexual
21 assault?

22 A. Yes.

23 Q. And do you agree with the PREA principle or standard
24 that says it's a zero tolerance workplace?

25 A. Yes, sir.

1 Q. Zero tolerance for sexual assault?

2 A. Yes.

3 Q. Zero tolerance for sexual harassment?

4 A. Yes.

5 Q. Have you ever been offered PREA posters that say
6 such, by Mr. Hompe, the jail inspector?

7 A. I don't believe I was ever offered that by Mr. Hompe.

8 Q. Did you know they exist?

9 A. Yes.

10 Q. Did you ever put any up to inform your inmates in the
11 jail?

12 A. No.

13 Q. And you didn't do this for multiple reasons, correct?

14 A. Correct.

15 Q. And I think you've told me in the past you didn't do
16 this because you think that inmates can hide contraband
17 behind them, correct?

18 A. Correct.

19 Q. And that you think they may tunnel out behind those
20 PREA posters, correct?

21 A. Not that they might tunnel out, but there could be
22 damage to the facility it's hiding.

23 Q. I think your specific words to me, sir, were they
24 could tunnel out; do you recall that?

25 A. I do recall that.

1 Q. Have you seen the size of the PREA poster?

2 A. Yes.

3 Q. How large are PREA posters?

4 A. I can't say. One foot by two and-a-half feet
5 perhaps. There's -- my understanding is there's a number
6 of different sizes.

7 Q. Would there be a budgetary constraint to putting up a
8 PREA poster?

9 A. Nothing comes to mind.

10 Q. Would there be a budgetary constraint on the inmate
11 process -- inmate screening process to provide them
12 information on PREA?

13 A. They are provided information.

14 Q. And the information that you're speaking of, sir, is
15 in the handbook, correct?

16 A. Correct.

17 Q. At the bottom of page 10 of the handbook, correct?

18 A. I believe that's the page number.

19 Q. Sir, I'm showing you what's been admitted into
20 evidence as Exhibit 15. Whoops. Do you recognize that,
21 sir?

22 A. I do.

23 Q. Now, that's an inmate screening form that is filled
24 out by one of your jailers on intake, correct?

25 A. In addition to the transporting officer, yes.

1 Q. And I don't know what you mean by that, sir, because
2 my question is specifically, it's filled out by an intake
3 officer?

4 A. As well as a transport officer.

5 Q. Okay. Do you mean at the same time two people are
6 talking to this individual?

7 A. No, no, sir. The arresting or transporting officer
8 is responsible for completing the top portion of the form
9 in relation to anything that may have happened during that
10 time of transport. The intake officer is responsible for
11 completing the bottom portion.

12 Q. I get it. So you have an intake person sit down and
13 at least go through the bottom portion of that form,
14 correct.

15 A. Correct.

16 Q. And do you anywhere -- do they sit down and ask any
17 other questions other than filling this form out?

18 A. Yes.

19 Q. And what form is that?

20 A. There's an inmate medical screening that produces a
21 form, but there are numerous other questions they obtain
22 their information from booking.

23 Q. Now, they sit down and spend quite a bit of --
24 somebody from your jail facility sits down and spends
25 quite a bit of time with an inmate on booking -- in

1 booking, correct, on intake?

2 A. Yes.

3 Q. At least 15 minutes?

4 A. It varies.

5 Q. Is it more than 15 minutes?

6 A. Generally, yes.

7 Q. All right. So my assumption that at least 15
8 minutes, but maybe more. Does the jail officer spend more
9 than 20 minutes on intake with a --

10 A. It depends.

11 Q. Would they spend less?

12 A. Yes.

13 Q. But not less than 15?

14 A. It depends.

15 Q. At any time there are they shown any sort of -- are
16 inmates shown videos regarding how to remain free from
17 sexual assault?

18 A. No.

19 Q. At intake no?

20 A. No, sir.

21 Q. Are they ever during their incarceration?

22 A. I can't speak for what they turn on the TV, but we
23 don't provide a video, no.

24 Q. Is there anywhere in your initial intake process that
25 any one of your staff reviews the inmate handbook with,

1 page by page, with the inmate?

2 A. I can't tell you with accuracy what every one of my
3 jail staff -- how they perform the intake process. I
4 don't believe any go over the handbook with them, just
5 instruct them to read it.

6 Q. You have a uniform -- you try to maintain uniform
7 processes, correct?

8 A. Correct.

9 Q. So generally speaking, to the best of your
10 information, your guard or your jail staff does not review
11 the inmate handbook page by page with the inmate?

12 A. That's correct.

13 Q. So you don't know whether or not the inmates would
14 ever read page 10 of this 12-page document?

15 A. There's no way I could know that.

16 Q. And would you agree, sir, that it's been stated
17 before that the policy manual, which is Exhibit 6 -- or
18 14, excuse me, and the multiple policies in here are never
19 handed to an inmate?

20 A. Correct.

21 Q. Sir, you believe that Darryl Christensen was liked by
22 his co-workers; isn't that correct?

23 A. I believe he was, yes.

24 Q. You've identified his performance as, day to day, as
25 lackadaisical?

1 A. Yes.

2 Q. You also identify that he likes to have a good time,
3 correct?

4 A. Correct.

5 Q. And that his rapport with his co-workers was good,
6 correct?

7 A. Correct.

8 Q. Sir, how many sexual harassment or sexual assault
9 allegations have you had to investigate in your jail over
10 time?

11 A. I would say one.

12 Q. And is that Allen Jorgenson?

13 A. Yes, sir.

14 Q. And Allen Jorgenson is a friend of yours, correct?

15 A. We're friendly.

16 Q. And Mr. Jorgenson is no longer employed at the Polk
17 County Jail?

18 A. Correct.

19 Q. And you did an entire investigation into Allen
20 Jorgenson's conduct, correct?

21 A. Myself and Chief Deputy Moe, yes.

22 Q. We've heard a lot of testimony with regard to that,
23 so I'm going to try to condense that, okay? You
24 interviewed -- you were informed that there may be a
25 problem of an inappropriate relationship that Darryl

1 Christensen -- or excuse me, Allen Jorgenson had with an
2 inmate identified by initials NS?

3 A. Correct.

4 Q. You investigated that, correct?

5 A. Yes.

6 Q. You found out that Allen Jorgenson takes an extended
7 amount of time when he's working in the max -- master
8 control to affix a camera on the minimum security area
9 known as K pod, correct?

10 A. There were three, I believe it was, three separate
11 occasions while he was working in master control that I
12 checked, yes.

13 Q. In each of those three times that you checked when he
14 was working in master control you came to the conclusion
15 he had affixed an inordinate amount of time on K pod where
16 the women are housed in minimum security, correct?

17 A. Correct.

18 Q. You didn't look up any more, did you?

19 A. No, sir.

20 Q. So the three that you looked at, you found to be true
21 that's what he did, correct?

22 A. It appeared to be an inordinate amount of time, yes.

23 Q. There is also an allegation, sir, that Mr. Jorgenson
24 touched the buttocks of an inmate, correct?

25 A. Correct.

1 Q. Showing you the front of Exhibit 8 -- 18, excuse me,
2 can you see that document?

3 A. Yes, sir.

4 Q. Do you know what that document is?

5 A. Yes, sir.

6 Q. What is that document?

7 A. This document was generated following the
8 disciplinary process for Officer Jorgenson detailing, as
9 you can see, each of the individual questions, essentially
10 a checklist to make sure that we were thorough in the
11 investigation and all things were considered for the
12 decision we've made.

13 Q. Did you fill that document out?

14 A. Yes, sir.

15 Q. You prepared that document. And do you store that
16 document, in the ordinary course of your business, at the
17 Polk County Jail?

18 A. Yes, sir.

19 Q. Sir, the initial portion of this was a summary that
20 you completed and the second page of that appears to
21 have --

22 MR. WEIDNER: Your Honor, for the Court --

23 MR. CRANLEY: He's already overruled our
24 objections.

25 (Discussion held off the record.)

1 THE COURT: Let's have a sidebar. If you could
2 bring those pages with you, Counsel.

3 (At sidebar.)

4 THE COURT: You're going to have to enlighten me
5 as to exactly what you're attempting to do and then I'll
6 indicate how we should proceed.

7 MR. WEIDNER: The problem was I hadn't realized
8 it was on. We didn't have an agreement and that was one
9 that wasn't admitted.

10 THE COURT: Okay.

11 MR. WEIDNER: When I realized it I turned it off.
12 I asked counsel if we stipulated to this and that --

13 THE COURT: What exhibit is it?

14 MR. WEIDNER: It's No. 18.

15 MR. CRANLEY: 18. It's the report of the
16 Jorgenson investigation.

17 THE COURT: I have no longer got confidence in my
18 list because I say that was stipulated to, 18.

19 MR. CRANLEY: No. I think there's a little bit
20 of confusion because my understanding was we had objected
21 to it and you overruled our objection.

22 THE COURT: That's a different question than what
23 had been stipulated to. If the parties advised me that
24 what you did was stipulated to it, it's deemed admitted.
25 If what you had intended to do was -- I don't know what

1 else you would have intended to do. Because I ruled on
2 the objection, that was gone, so we wouldn't stipulate to
3 anything more.

4 MR. CRANLEY: Correct, we didn't stipulate to it.

5 THE COURT: But you did. You gave me a list, we
6 read it out in open court, which collided that document.

7 MR. CRANLEY: I don't think so, but --

8 THE COURT: What is it you want to do with this?

9 MR. WEIDNER: Notice, it's all about notice.
10 It's his investigation and notice that they had a finding
11 of sexual assault.

12 THE COURT: When you say "his investigation" --

13 MR. WEIDNER: It is completely notice.

14 THE COURT: -- you've established that.

15 MR. WEIDNER: And I haven't gone through -- I
16 didn't go through it with Moe or anyone else because he
17 wrote it.

18 THE COURT: But you've established that it's his
19 investigation and I will admit it for that purpose. Your
20 objection -- well, I've already ruled on the objection, so
21 we are good.

22 (End of sidebar.)

23 THE COURT: Occasionally there are rules of
24 evidence that need to be addressed. We've addressed it
25 and you may proceed, Counsel.

1 BY MR. WEIDNER:

2 Q. Sir, this is your investigation summary of the
3 allegations of fraternization and misconduct by Allen
4 Jorgenson; is that correct?

5 A. Yes, sir.

6 Q. And it summarizes accurately all of the investigation
7 that you completed?

8 A. Yes, sir.

9 Q. And part of that was done by Chief Deputy Moe at the
10 same time, correct?

11 A. Yes.

12 Q. Sir, this investigation was initiated because of a
13 complaint by an officer indicating there is a disturbance
14 about Allen Jorgenson with female inmates, correct?

15 A. Yes.

16 Q. And the complaining officer was Dolly Fjorden,
17 correct?

18 A. Kathleen Fjorden is her legal name, but yes.

19 Q. Kathleen Fjorden. And you did a complete
20 investigation, along with Chief Deputy Moe, and you came
21 to the conclusion, sir, that a written reprimand was in
22 order; is that correct?

23 A. Yes, sir.

24 Q. Because you felt, sir, that for -- strike that.

25 Isn't it -- you indicated, sir, that there were some, on

1 the bottom of page 3746, were you involved in this
2 conversation? It says, "CD Moe informed Jorgenson that
3 there was some potentially serious consequences involved
4 in this situation."

5 A. I was.

6 Q. And did you see him do that?

7 A. Did I see him inform him of that?

8 Q. Did you witness that?

9 A. I was present.

10 Q. But he did not feel that Officer Jorgenson's job was
11 in jeopardy, correct?

12 A. Correct.

13 Q. And you further state that you established a few
14 things and some of those things were that you did not
15 believe that the reporting party, NS, was credible,
16 correct?

17 A. Correct.

18 Q. And that -- but you did believe that you established
19 through your investigation that Officer Jorgenson flirts
20 with female inmates?

21 A. Some of the female inmates, yes.

22 Q. That you believe that Officer Jorgenson, at best, had
23 some kind of arranged or relationship between him and
24 inmate, correct?

25 A. Correct.

1 Q. At worst he fostered and encouraged it, correct?

2 A. Correct.

3 Q. After discussing this with Sheriff Johnson and Chief
4 Deputy Moe, you indicated that you advised him you would
5 be preparing a letter of reprimand for this action as
6 discipline, correct?

7 A. Yes, sir.

8 Q. And did you, along with Chief Deputy Moe, try to
9 assure Officer Jorgenson that the letter in his file was
10 not a major deal?

11 A. Yes, sir.

12 Q. So the both of you tried to persuade him of that?

13 A. We tried to assure him of that.

14 Q. And is a letter of reprimand not a big deal -- I'm
15 sorry, major deal?

16 A. A major deal, I don't believe so.

17 Q. And so the one time that you had a sexual assault,
18 investigated it and found out that there may have been an
19 inappropriate relationship, you treated it as not a major
20 deal?

21 A. That's not correct.

22 Q. Shortly after you came to this decision identified in
23 your note, more information came to light, right?

24 A. Correct.

25 Q. And you got a letter from NS that indicated to you

1 that there was -- that she changed her story, right?

2 A. Yes.

3 Q. And you actually asked Sergeant Schaefer to verify
4 what she was talking about to determine whether or not she
5 was telling you the truth, correct?

6 A. I don't recall if I asked him or if he had done that
7 on his own.

8 Q. And he verified her story about what she had done and
9 confirmed that she may be telling the truth at this point;
10 is that right?

11 A. I believe that's correct.

12 Q. So that was additional information. Did you involve
13 the Sheriff in the decisions or the discussion of the
14 additional information you received?

15 A. I don't recall at what point the Sheriff's
16 involvement was. I know that during the course of the
17 initial investigation, then receiving the additional
18 information, things were discussed with him, but I don't
19 recall at what points.

20 Q. You do not recall whether or not you had additional
21 conversations with him after the initial suggested
22 reprimand; is that correct?

23 A. Correct.

24 Q. Who did the investigation after the initial -- after
25 you received the letter from inmate NS?

1 A. Chief Deputy Moe and myself continued with it.

2 Q. And on page 3751 of this document you indicate that
3 Sheriff Johnson is involved at some point; is that right?

4 A. Yes.

5 Q. And that at this point Sheriff Johnson pointed out
6 that "The behavior he just admitted was exactly the issue
7 we're talking about." When you say "he admitted," you're
8 referring to Officer Jorgenson?

9 A. Yes.

10 Q. "Even if there is no touching, his behavior is
11 inappropriate and unprofessional," correct?

12 A. Yes.

13 Q. You did not change the decision to level the
14 discipline at a letter of reprimand, correct?

15 A. Correct.

16 Q. In fact you said that was the end of the issue at
17 this point, correct?

18 A. Correct.

19 Q. Sir, I'm showing you the previous page identified as
20 3750 in Exhibit 18. Sir, you reminded Officer Jorgenson
21 that this was quite serious, including touching of an
22 inmate?

23 A. That the allegations were serious, yes.

24 Q. And that they could be considered a crime?

25 A. Correct.

1 Q. Did you at all refer this out for criminal
2 investigation?

3 A. No, sir.

4 Q. Did you have that opportunity to refer it out for
5 criminal investigation?

6 THE COURT: By that he means, if you thought it
7 justified it, you could have referred it?

8 THE WITNESS: Oh, yes, sir. Had we thought it
9 justified it, we would have.

10 BY MR. WEIDNER:

11 Q. When you say "we," who all came to this conclusion?

12 A. Myself and Chief Deputy Moe. I don't recall if the
13 Sheriff was consulted about that or not.

14 Q. And Chief Deputy -- where would you have referred
15 it -- where would it have been investigated if you had
16 referred it?

17 A. We would have spoken with the district attorney. And
18 if the district attorney did not feel it would be proper
19 for his office to prosecute it, I assume he would ask one
20 of his -- one of the surrounding counties.

21 Q. What about additional criminal investigation like was
22 done with Mr. Christensen's?

23 A. That would have, I assume, been handled by an outside
24 agency.

25 Q. Now, there was some discussion earlier that

1 Mr. Jorgenson resigned shortly after these allegations?

2 A. Correct.

3 Q. And do you know whether or not he resigned because of
4 these allegations?

5 A. I recall having a discussion -- I take that back. I
6 don't recall if it was a discussion or if he had sent me a
7 message of some sort. He stated that he did not like the
8 person that he was becoming working in the corrections
9 field, but did not specify that it was related to this
10 incident.

11 Q. He continued to work with Polk County after you
12 issued the letter of reprimand, correct?

13 A. For a few weeks, yes.

14 Q. And there was a separate investigation that was going
15 on of him in HR, correct?

16 A. Correct.

17 Q. And that was handled by the HR director, Andrea
18 Jerrick, correct?

19 A. Yes. I was involved with it as well.

20 Q. And those were separate allegations from these,
21 right?

22 A. Correct.

23 Q. And after that investigation by Ms. Jerrick
24 concluded, what was her recommendation?

25 A. I don't recall offhand, sir.

1 Q. Did she recommend termination of Mr. Jorgenson?

2 A. I don't recall offhand.

3 Q. It was only after that investigation concluded that
4 his resignation was provided, correct?

5 A. I believe that's accurate.

6 Q. Sir, what are the levels of discipline available to
7 you for inappropriate behavior of one of your jail staff?

8 THE COURT: Counsel, we've gone through this with
9 another witness. And I'm concerned that the focus is
10 shifting from the claim here having to do with
11 Mr. Christensen's conduct to that involving Mr. Jorgenson.
12 And I think we've heard enough on that subject and you
13 should move on to the claim at hand.

14 MR. WEIDNER: Certainly, Your Honor.

15 THE COURT: Thank you.

16 BY MR. WEIDNER:

17 Q. Sir, you yourself have engaged in what's called --
18 what you refer to as *tier talk*, correct?

19 A. Yes, sir.

20 Q. And you have heard -- in fact heard Mr. Christensen
21 make inappropriate or sexual comments about females; is
22 that correct?

23 A. Females in general, yes.

24 Q. And you have also engaged in tier talk which is not
25 necessarily flattering talk amongst co-workers in the

1 tier; is that fair to say?

2 A. Yes.

3 Q. And have you heard, sir, Allen -- or excuse me,
4 Darryl Christensen comment about an inmate's rear end
5 while you were a supervisor?

6 A. I don't recall specifically him commenting about an
7 inmate's rear end, but it could have happened.

8 Q. Do you recall telling me in your deposition that
9 happened?

10 A. I don't.

11 Q. Do you recall ever hearing comments, as a supervisor,
12 about Darryl Christensen commenting about an inmate's
13 breasts?

14 A. Yes.

15 Q. Do you believe, sir, that you need to be part of what
16 you identify as *tier talk* on occasion as a supervisor --

17 A. On occasion, yes.

18 Q. -- to become a leader or a trusted leader within that
19 group; is that correct?

20 A. That's part of the reason, yes.

21 Q. At some point, sir, during Ms. Juleen's incarceration
22 with your facility were you dating her probation officer?

23 MR. CRANLEY: Objection. Relevance.

24 THE COURT: I'll sustain that.

25 MR. WEIDNER: Pardon?

1 THE COURT: Let's have a sidebar. I take that
2 back. You can answer that question, but we're not going
3 to go much further down this road. But you can answer
4 that question.

5 THE WITNESS: Yes, sir.

6 THE COURT: Your answer is "yes"?

7 THE WITNESS: No. I'm sorry. I was saying "yes,
8 sir" to you, Judge.

9 THE COURT: Okay. Why don't you pose your
10 question again.

11 BY MR. WEIDNER:

12 Q. At some point during Ms. Juleen's incarceration at
13 Polk County, were you dating Ms. Juleen's probation
14 officer?

15 A. I would have to look at the dates of her
16 incarceration to be able to answer that.

17 THE COURT: But there was a period of time when
18 you were dating the probation officer?

19 THE WITNESS: Yes. I don't know if Ms. Juleen
20 was ever incarcerated during that time or not.

21 MR. WEIDNER: Thank you. I have no further
22 questions.

23 THE COURT: Direct.

24 MR. CRANLEY: Thank you, Your Honor.

25

DIRECT EXAMINATION

BY MR. CRANLEY:

Q. Good afternoon, Captain Nargis.

A. Good afternoon, sir.

Q. I want to go very briefly through your background again. If you could just tell us your educational background, please, for the jury.

A. Graduate of Washington High School in Germantown 1989. I attended one year at the University of Wisconsin-Milwaukee before enlisting in the Army. Once I completed active duty I returned to the University of Wisconsin-Eau Claire where I graduated in 1987 with a bachelor's degree in criminal justice.

Q. And how long were you in the Army?

A. Four years of active duty, four years in the Guard and Reserves.

Q. And what positions did you hold in the Army and National Guard?

A. While on active duty I was an intelligence analyst, military intelligence analyst. I spent one year in the National Guard as a medic, although I never received training on that, before I transferred to the Army Reserve as an interrogator.

Q. Can you tell us a little bit about what an interrogator does?

SCOTT NARGIS - DIRECT

1 A. Certainly. An interrogator questions, in our case
2 prisoners of war, civilian internees, relative to the
3 discovery of information.

4 Q. And were you honorably discharged from the National
5 Guard?

6 A. Yes, sir.

7 Q. And what was your rank at the time?

8 A. E-5 sergeant.

9 Q. And what year was that in?

10 A. 1998.

11 Q. Did you, thereafter, begin your job or your career in
12 the corrections field?

13 A. I actually started with the Sheriff's Department in
14 March of '98 and got out in September of '98 from the
15 military.

16 Q. And at that time it was both dispatch and the jail
17 were run together, correct?

18 A. Yes, sir.

19 Q. And was there a time that you -- that those split
20 apart into separate divisions of the Sheriff's Office?

21 A. Yes. I believe it was the early part of 2001 when we
22 separated and I remained in the jail.

23 Q. Was that a choice that you made at the time?

24 A. Yes.

25 Q. We've talked about your role in devising the training

1 or working on training with inmates -- or I'm sorry, with
2 jail officers. I want to just have you give us an
3 overview of what the training program is, starting with
4 when a jail officer or corrections officer is hired.

5 A. Sure. There are essentially four facets to our
6 training in the Polk County Jail. When an officer starts
7 they're placed in what's called a *field training program*.
8 They're assigned to an officer, an experienced officer, to
9 help them learn, basically get on-the-job training.
10 That's an eight to ten-week program depending on how
11 quickly the person picks up different aspects of the
12 process: working with the jail software, et cetera, where
13 they learn the basics of the policies, the procedures; how
14 to handle the duties of each of the different posts we
15 work, interacting with inmates, safety concerns, things of
16 that nature.

17 Second facet would be the state jail training
18 requirement, the 160-hour course. Try to get the officer
19 through that as quickly as possible.

20 And we do -- the third aspect would be
21 recertification training. Officers are required to have
22 24 hours of continuing education every year in order to
23 maintain their certification status. And that's the
24 purpose of our in-house training program is to get hours
25 towards that.

1 Fourth one would be the daily training program we
2 discussed briefly before.

3 Q. Thank you. You mentioned interacting with inmates as
4 being part of the training that you do in the field
5 training program?

6 A. Yes, sir.

7 Q. What do you mean when you talk about interaction with
8 inmates by jail officers?

9 A. Appropriate ways to maintain distance, both for
10 physical safety as well as maintaining a professional
11 distance; not giving out personal information,
12 professional communications, things of that nature.

13 Q. That includes not engaging in inappropriate
14 relationships with inmates, correct?

15 A. Correct.

16 Q. And that would certainly include an inappropriate
17 sexual relationship, I assume?

18 A. Absolutely.

19 Q. That's something that's covered in your field
20 training?

21 A. It should be part of the process when they go through
22 those sections of the policy, yes.

23 Q. Review of the policy manual is part of the field
24 training?

25 A. Yes.

1 Q. Let's talk about the daily training program that you
2 have. Is that something that's required by any particular
3 governing body, the state or anyone else?

4 A. No, sir.

5 Q. That's something you've developed on your own?

6 A. Yes, sir.

7 Q. That's in addition to the curriculum that's
8 identified and required by the state for certification and
9 recertification, correct?

10 A. Correct.

11 Q. And you were asked some questions about Gordon
12 Graham?

13 A. Yes, sir.

14 Q. Can you explain how that philosophy fit in with what
15 you're doing in your daily program?

16 A. Certainly. The presentation was made in regards to
17 again risk, risk management, risk mitigation. The
18 high-frequency events, something we do on a daily basis,
19 aren't necessarily worrisome issues: passing out meals,
20 things like that.

21 Low-frequency events that are high risk are where we
22 need constant reminders of how things are supposed to be
23 done. So I identified sections of the policy relevant to
24 that. I could give you examples of the topics if you'd
25 like. But the point being that every day the average is

1 five minutes a day to review one of these sections of
2 policy. Obviously some are longer, some are shorter.

3 Q. Is there anything besides just policy sections that
4 are included in that daily training?

5 A. Yes. There's, I want to say, 15 videos from the
6 Department of Justice on performing different tactics and
7 techniques that are used in our subject control system,
8 POSC.

9 Q. So those are part of the 90 --

10 A. Correct.

11 Q. -- the 90-subject rotation that you go through?

12 A. Correct.

13 Q. Do you expect that your jail officers, when they
14 review the number on the calendar and open up the file and
15 write down the name of the topic that they're handling and
16 then sign it, that they're acting with proper ethical
17 standards?

18 A. Absolutely.

19 Q. You expect them to be honest about doing that?

20 A. Yes.

21 Q. And to act professionally as professionals?

22 A. Yes, sir.

23 Q. Have you ever been asked to present that training
24 program anywhere?

25 A. Yes. I presented it at one of the state jail

1 administrator conferences.

2 Q. And how did that come to happen?

3 A. If I'm not mistaken, it was a subject that I had
4 discussed with the jail inspector. And I believe that he
5 was part of the planning committee for the conference that
6 year and he asked me to present on it.

7 Q. Was that Jail Inspector Hompe?

8 A. Yes, sir.

9 Q. You mentioned earlier that you were a certified
10 trainer on professional communication skills. Did I hear
11 that correctly?

12 A. Correct.

13 Q. And what does professional communication skills
14 entail?

15 A. It's a broad range covering -- it covers specific
16 techniques for dealing with arbitration as it relates to,
17 in our setting, working with inmates; dealing with
18 mediation, dealing with crisis management; but also
19 provides guidelines and tips for staying positive in the
20 job and communicating in a professional fashion with
21 co-workers, inmates, visitors to the facility, other
22 professionals.

23 Q. So again part of that would include training on
24 maintaining an appropriate and professional relationship
25 between a jail guard and an inmate?

1 A. Correct.

2 Q. You were asked some questions about PREA. You
3 understand what PREA is?

4 A. Yes, sir.

5 Q. You mentioned that you had sought out on your own
6 some resources to educate yourself on it?

7 A. Yes, sir.

8 Q. What did you mean by that?

9 A. There is an online site -- I think it's through the
10 *PREA Resource Center*, I think it's the website -- that has
11 the full Act in there with what the guidelines are.

12 Q. What do you believe Polk County Jail's obligations
13 are with respect to PREA?

14 A. What I was informed by the jail inspector is that we
15 are not obliged to --

16 MR. WEIDNER: Objection. Hearsay.

17 THE COURT: I'll sustain that objection.

18 BY MR. CRANLEY:

19 Q. Are you obligated to implement every provision within
20 the PREA guidelines?

21 A. To my knowledge, no.

22 Q. Did you, however, implement some ideas out of PREA?

23 A. Yes, sir.

24 Q. Can you give me an example of some of those?

25 A. As noted earlier, we revised the jail policy

1 *Fraternization With Inmates* to include a section on that
2 spelling out prohibited behaviors, edited the section to
3 the inmate handbook.

4 Q. Is there anything about the Wisconsin Administrative
5 Code or Wisconsin statutes that requires you to include
6 that language in your policies?

7 A. Not that I'm aware of, sir.

8 Q. Is there anything that required you to update your
9 inmate handbook to include that warning at the bottom?

10 A. Not that I'm aware of, sir.

11 Q. I want to take a brief look at a couple of these
12 policies that we've talked about.

13 A. Certainly.

14 Q. And I could start with Exhibit 502.

15 MR. CRANLEY: Can everybody see that now,
16 including the jury, Your Honor?

17 THE COURT: Yes. You can tell if you look at
18 that monitor.

19 MR. CRANLEY: Oh, good. Thank you.

20 BY MR. CRANLEY:

21 Q. What is this policy and what is its purpose, Captain
22 Nargis?

23 A. This is the policy on *Supervision and Management of*
24 *Inmates*. The purpose is to provide a guideline for
25 management of inmates.

1 Q. And what, in general, does this policy address?

2 A. In general it talks about everything from your
3 general interaction to conducting -- if I remember
4 correctly, in this policy, it talks about conducting
5 walk-throughs; as it notes, in the general philosophy,
6 control compliance, consequence consistency, and how to
7 deal with those issues.

8 Q. All right. Let's turn to the next policy, No. 503.

9 Now, this is -- we've looked at this before. I don't want
10 to belabor it -- this is the PREA policy as it existed --
11 I'm sorry, the *Fraternization with Inmates* policy before
12 it was updated to include the PREA language, correct?

13 A. Correct.

14 Q. And does this policy prohibit improper relationships
15 with inmates?

16 A. If I recall correctly, yes.

17 Q. If I direct your attention to letter A on page 1?

18 A. Yes.

19 Q. All right. Does that indicate what relationships are
20 prohibited between inmates and staff?

21 A. Yes, sir. It defines them.

22 Q. And could you tell me what it is that -- what it says
23 about appropriate relationships with inmates?

24 A. It says that prohibited relationships: you cannot
25 live in the same household with the prisoner, cannot work

1 for a prisoner, cannot employ a prisoner, cannot extend
2 promise or offer special consideration or treatment to a
3 prisoner, have personal contacts other than those required
4 by your duty, being in intimate social or physical
5 relationship or providing or receiving goods or services.

6 Q. And intimate social or physical relationship with a
7 prisoner would certainly include a sexual relationship,
8 true?

9 A. Yes, sir.

10 Q. All right. Turn to the next policy, 504. Am I
11 correct this is an update of the previous policy --

12 A. Correct. Yes.

13 Q. -- effective in July 2012 --

14 A. That's correct.

15 Q. -- just before PREA regulations went into effect?

16 A. Correct.

17 Q. And turning to the section on PREA, which is on page
18 3 of the exhibit, these are the regulations -- or these
19 are the policy provisions you added based on your review
20 and understanding of PREA?

21 A. Yes, sir.

22 Q. And what generally does this require?

23 A. It requires that, in general, requires reporting any
24 suspicion or information related to, as it states in
25 letter A, an employee or inmate being involved in sexual

1 misconduct.

2 Q. Are your policies required to be reviewed and
3 approved by the Department of Corrections?

4 A. Yes, sir.

5 Q. Are substantial revisions to the policies required to
6 be reviewed?

7 A. Yes, sir.

8 Q. Was this a substantial revision that was reviewed?

9 A. Yes, sir.

10 Q. When you make a revision, such as this, to your
11 policies, is that something that you notify the staff of?

12 A. Generally I'll either e-mail that specific policy
13 noting the revisions or send an e-mail stating to check
14 the policy manual here for revisions related to what --

15 Q. And is this Policy C-202 one of those low frequency,
16 high risk or was it high risk, high frequency?

17 A. This would be high risk, low frequency.

18 Q. High risk, low frequency. This is one of those
19 policies that would be part of that rotation?

20 A. I believe it is.

21 Q. And very quickly I want to look at 506. This is the
22 *Inmate Rights* --

23 A. Yes, sir.

24 Q. -- policy? And on this copy we're looking at the
25 most recent revision was January 2011, true?

1 A. Yes.

2 Q. I want to turn to page 3 of the exhibit and just
3 point out bullet point No. 5 and ask you a question about
4 it.

5 A. Yes, sir.

6 Q. Could you read that section?

7 A. "Under no circumstances will any inmates be the
8 object of verbal, physical, emotional, psychological or
9 sexual harassment by facility staff. Any officer engaged
10 in such actions is subject to disciplinary charges and/or
11 termination."

12 Q. This is a policy that every jail officer required to
13 follow?

14 A. Yes, sir.

15 Q. And this is considered to be and communicated to your
16 jail officers a right that inmates have in the Polk County
17 Jail?

18 A. Yes.

19 Q. Was this section of the policy present, if you know,
20 before the January revision date that we saw as the most
21 recent thus far?

22 A. I believe this portion was included, yes.

23 Q. How many inmates come through the Polk County Jail on
24 an annual basis?

25 A. Over the course of the last nine years, the average

1 is about 1,550 a year intakes.

2 Q. Do you know how many total inmates come through the
3 Polk County Jail in that duration of time you're talking
4 about?

5 A. 14,100 I believe was the total I saw.

6 Q. And in that time have you had any other instances of
7 sexual misconduct by any jail officer other than Darryl
8 Christensen?

9 A. There was one allegation with Officer Jorgenson. But
10 other than that, no.

11 Q. With regard to the investigation concerning Officer
12 Jorgenson, you received reports from Officer Fjorden,
13 correct?

14 A. Yes.

15 Q. And from Sergeant Schaefer?

16 A. Yes.

17 Q. And those were rather lengthy reports?

18 A. I believe so.

19 Q. And you got them from them because you were out of
20 town or it was on a weekend or something?

21 A. I believe the incident occurred on a Saturday and
22 they were e-mailed to me. I could see them on my phone,
23 but I didn't get a chance to really dive into them until I
24 was back on duty.

25 Q. You were asked some questions about the video

1 information that you observed with the camera being
2 trained somewhere?

3 A. Yes.

4 Q. How is it that you came to know that that was the
5 case?

6 A. If I recall correctly, there was some information in
7 Officer Fjorden's report or statement that he spends an
8 inordinate amount of time there or leering into the cell.
9 I don't know, it was a tool available to me, so I decided
10 to look into it.

11 Q. So as part of your investigation, one of the first
12 things you did was to go and review the video evidence
13 that was there?

14 A. Yes.

15 Q. And then you interviewed some seven or eight inmates
16 in the jail?

17 A. Yes, sir.

18 Q. And you made contact with one or two former inmates
19 who you thought might have relative information; isn't
20 that true?

21 A. Yes. I think their names were mentioned during our
22 investigation and then made contact with them.

23 Q. Why did you believe that a written reprimand was an
24 appropriate disciplinary action?

25 A. Well, as was indicated in my documentation, we felt

1 pretty strongly that there wasn't an inappropriate
2 relationship that was fostered. We did not have -- we had
3 contrary statements from inmates about what was or wasn't
4 happening. We had contradictory statements from the
5 alleged victim herself. We had no evidence to move
6 forward with anything further based on the inappropriate
7 relationship and showing favoritism. And taking into
8 account Officer Jorgenson's work history up to that point,
9 we deemed that was the appropriate remedy.

10 Q. Did Officer Christensen attend training appropriately
11 during the course of his employment?

12 A. Generally speaking, yes.

13 Q. You kept track of that sort of thing and kept it in
14 his file?

15 A. Yes. This is more of just a recollection as I sit
16 here now: I can recall a time or two where he missed
17 mandatory training. But generally speaking, he attended.

18 Q. He was properly certified as a corrections officer?

19 A. Yes.

20 Q. And he was recertified each year?

21 A. Yes.

22 Q. Did the conduct that he's admitted to having engaged
23 in here violate the policies of Polk County?

24 A. Yes.

25 Q. Did it violate the training that he received from you

1 and from others at the Polk County Jail?

2 A. Yes.

3 MR. CRANLEY: Thank you. That's all I have.

4 THE COURT: All right. Any recross? I'm sorry.

5 Ms. Christensen, did you have any questions -- or Ms.

6 Mills?

7 MS. MILLS: No, I do not.

8 THE COURT: I'll come back to you later on cross.

9 CROSS-EXAMINATION

10 BY MR. WEIDNER:

11 Q. Sir, you can't say with any certainty that C-202 is
12 in your rotation of those 90 topics, can you?

13 A. Sitting here, off the top of my head, no, sir.

14 Q. Sir, speaking of the nine years of experience that
15 you have with -- I'm uncertain as to why this isn't on.

16 THE COURT: You probably switched off -- you got
17 it.

18 MR. WEIDNER: Thank you, Your Honor.

19 BY MR. WEIDNER:

20 Q. You've known him for nine years, correct?

21 A. I'm sorry. I've known who, sir?

22 Q. Mr. Jorgenson.

23 A. Oh, longer at this point, yes.

24 THE COURT: But at that point it was
25 approximately nine years?

1 THE WITNESS: Yes.

2 BY MR. WEIDNER:

3 Q. Sir, you felt he was being less than honest to you,
4 don't you, in that investigation?

5 A. Yes, sir.

6 Q. And on page 3751 you say, "I feel compelled to note
7 that based upon my training and experience and based on
8 knowing Officer Jorgenson for nine-plus years, it's my
9 opinion he was not only less than honest about things, he
10 was outright lying to us at times," correct?

11 A. Yes, sir.

12 MR. WEIDNER: Thank you. No further questions.

13 THE COURT: Unless there's anything more, you may
14 step down.

15 THE WITNESS: Thank you, Judge.

16 (Witness excused at 3:08 p.m.)

17 THE COURT: Plaintiffs may call their next
18 witness.

19 MS. BANNINK: Call Bradley Hompe.

20 THE COURT: Mr. Hompe, if you would come straight
21 forward and through that swing gate. And then work your
22 way around in front of the court reporter and just stand
23 before the court reporter for sworn.

24 **BRADLEY HOMPE, PLAINTIFFS' WITNESS, SWORN**

25

DIRECT EXAMINATION

1
2 BY MS. BANNINK:

3 Q. Good afternoon, Mr. Hompe.

4 A. Hi.

5 Q. Please state your name.

6 A. Brad Hompe.

7 Q. And where were you employed up until last year?

8 A. Wisconsin Department of Corrections. I still am.

9 Q. You are. Okay. And when did you first start with
10 the Department of Corrections?

11 A. March 1995.

12 Q. And can you explain how your career progressed with
13 the Department of Corrections?

14 A. Sure. I was a correctional officer and promoted
15 through the prison system from officer to sergeant,
16 lieutenant, captain, unit manager, deputy warden and
17 warden. And then following working in the institution I
18 was a jail inspector and now I'm a complaint examiner.

19 Q. And from what time period were you a jail inspector?

20 A. From December 2009 until -- excuse me -- last -- I
21 guess would have been August.

22 Q. And what duties did you perform as a jail inspector?

23 A. We had to inspect each jail annually for code
24 compliance for the administrative code that governs jails
25 in Wisconsin. We also did investigations if there would

1 be a death or a suicide. We did some training and
2 sponsored some training conferences, answered some inmate
3 complaints, and pretty much just helped them out with best
4 practices in the jail.

5 Q. Are there multiple jail inspectors throughout the
6 state of Wisconsin?

7 A. Yes, five.

8 Q. Were you assigned to a specific territory?

9 A. Yes.

10 Q. And did that territory include Polk County?

11 A. Yes.

12 Q. How many facilities were included within your
13 territory?

14 A. 17 county jails and three juvenile facilities.

15 Q. And during which period did you complete inspections
16 for the Polk County Jail?

17 A. 2010 through 2015.

18 Q. Are you familiar with what the Prison Rape
19 Elimination Act is?

20 A. Yes.

21 Q. And was this -- you'd indicated that you provide some
22 technical assistance?

23 A. Yes.

24 Q. Was this one of the areas that you would provide
25 assistance to jails within your territory?

1 A. The department did as a whole, yes.

2 Q. Tell me about what, briefly, what the Prison Rape
3 Elimination Act is.

4 A. My understanding of it is, it was an act that
5 directed that some standards be developed that would help
6 basically eliminate -- or not necessarily eliminate, but
7 stop sexual harassment and sexual abuse in jail and prison
8 settings.

9 Q. What did you tell jails as to whether or not this was
10 a requirement placed upon them?

11 A. Well, we had no authority over that, the DOC, so it
12 was not under my purview. As far as complying with PREA
13 standards, whether or not they had to comply, I didn't get
14 involved in that.

15 Q. But you -- strike that. From your perspective as a
16 jail inspector, PREA was not mandated under your purview,
17 correct?

18 A. Yes. Correct.

19 Q. Can you tell me the basics of what PREA requires?

20 A. Well, like I said, there's a set of standards. But
21 generally it basically -- the basics are you need to have
22 a reporting system for inmates that are in your custody to
23 report the allegation. We have to have some way to vet
24 that investigative process and some staff training so
25 staff understand their responsibilities for preventing

1 sexual harassment or sexual abuse.

2 Q. Do you consider yourself an expert on the subject of
3 the Prison Rape Elimination Act?

4 A. No, not at all.

5 Q. But you did provide resources available to the jails
6 within your county?

7 A. Yes.

8 Q. What resources did you provide with regards to PREA?

9 MR. BOHL: Objection. Relevance.

10 THE COURT: I'll overrule it. You can answer.

11 A. Again it wasn't me specifically; it was the
12 department. We provided -- we got a grant that put
13 together some training, so we put together a training
14 process for all the jails to use. So that would have been
15 one of the processes. We also sponsored some training
16 regionally. And some of the other things we did is we
17 provided posters that could be put in jails and some
18 samples some handbook language.

19 Q. Explain what those posters consisted of.

20 A. Basically it was a zero tolerance for sexual
21 harassment or sexual abuse in the facility.

22 Q. Do you know how big those posters were?

23 A. I couldn't tell you exactly, but probably twice the
24 size of this screen, same width.

25 Q. So maybe, what is that, three feet? Strike that.

1 A. All right.

2 THE COURT: Just for the record, you would say
3 it's about how much?

4 THE WITNESS: I would say it's about twice as
5 high as this screen, the same width. I don't know what
6 that would be, 10 by 24, something like that.

7 THE COURT: Inches?

8 THE WITNESS: Yes.

9 BY MS. BANNINK:

10 Q. Were there some services that offered additional
11 resources that you -- strike that. Did you make the
12 jails -- did you inform the jails about additional
13 resources that could be provided outside the Department of
14 Corrections?

15 A. Yes. We shared frequently e-mails as far as, like,
16 the *PREA Resource Center* is an online area where they can
17 find lots of things regarding the Act and the standards.

18 Q. Would you have given this information to Polk County?

19 A. Yes. It went out to all the jail administrators.

20 Q. What source of communication did you -- in what mode
21 did you communicate with the jail administrators with this
22 information?

23 A. E-mail. There was also discussion on the Listserv
24 regarding the topic.

25 Q. Was it a common discussion, the topic?

1 A. I guess you'd have to explain what you mean by
2 "common."

3 Q. In 2012 when the -- strike that. Are you aware of
4 when the standards came into effect?

5 A. Not exactly.

6 Q. Near the time that those standards came into effect
7 was the topic discussed regularly amongst jail
8 administrators?

9 A. Yes.

10 Q. And you indicated that the Department of Corrections
11 received a grant?

12 A. Yes.

13 Q. Are you aware of did they conduct studies with that
14 grant?

15 MR. BOHL: Objection. Relevance.

16 THE COURT: I'll sustain that objection.

17 BY MS. BANNINK:

18 Q. As a result of the grant did the Department of
19 Corrections create additional materials for jail
20 administrators within the state of Wisconsin?

21 A. Yes.

22 Q. Did they -- and you indicated they created posters?

23 A. We obtained the posters.

24 Q. Did they create any other resources?

25 A. What I recall is a PowerPoint training for PREA that

1 was developed and made available to all the jail
2 administrators.

3 Q. What would the purpose of that PowerPoint have been?

4 A. For staff training.

5 Q. Did you -- was there any cost for the jail
6 administrators to obtain that PowerPoint from the
7 Department of Corrections?

8 A. No.

9 Q. Was there any cost for jail administrators to obtain
10 the posters --

11 A. No.

12 Q. -- from the Department of Corrections?

13 A. Not at all.

14 Q. Did you, with your position as the jail inspector,
15 did you provide conferences for jail administrators within
16 your territory?

17 A. The Department of Corrections did.

18 Q. Did you discuss the Prison Rape Elimination Act at
19 those conferences?

20 A. Are you speaking of the jail administrators
21 conference or the meetings?

22 Q. The meetings. I apologize.

23 A. Yes. We discussed it at regional meetings.

24 Q. Has it also been discussed at the jail administrator
25 conferences?

1 A. Yes.

2 Q. Are you aware of whether or not Captain Nargis was
3 present throughout those meetings?

4 A. For the jail inspector meetings, yes, some of them.

5 Q. Are you aware whether or not Captain Nargis was
6 present at the annual conferences?

7 A. Generally, he was.

8 Q. Were there any outside -- you've recommended or you
9 indicated that there was one outside vendor that had PREA
10 resources. Were there any others that you would have
11 recommended to administrators?

12 A. I wasn't aware of any other.

13 Q. Was it difficult to find information with regards to
14 the Prison Rape Elimination Act for jail administrators
15 within your territory?

16 A. No.

17 Q. Upon request -- I believe you had indicated this --
18 did you provide any training to jail administrators within
19 your territory?

20 A. Specifically to administrators, no.

21 Q. Did you provide training with regards to correctional
22 officers?

23 A. Yes, I have.

24 Q. What kind of training did you provide?

25 A. Well, what I provided generally for the jail

1 themselves, suicide prevention was one of the topics and
2 what we call *avoiding inmate manipulation or*
3 *professionalism*. That would have been directly for the
4 jails.

5 Q. And what did the inmate manipulation and
6 professionalism consist of?

7 A. Basically it was, you know, avoiding what we term are
8 *con games*. It's basically a professionalism class:
9 Appropriate things that you do and don't discuss in front
10 of your clientele, how to respond to inappropriate
11 comments or behavior from them so that you don't end up in
12 a inappropriate relationship.

13 Q. And did you charge anything for providing this
14 training?

15 A. No.

16 Q. Did Polk County ever request this training?

17 A. Not that I recall.

18 Q. Was the training ever provided to Polk County, to
19 your knowledge?

20 A. Not that I recall.

21 Q. Showing you what's been marked as Exhibit 10, have
22 you seen this before? It's on your screen. I apologize.

23 A. That appears to be the handbook from the Polk County
24 Jail, yes.

25 Q. And you have seen this handbook before?

1 A. Yes.

2 Q. I draw your attention to page 10 of Exhibit 10. Do
3 you see that statement there at the bottom?

4 A. Yes.

5 Q. And what is that?

6 A. It appears to be a portion of a PREA notice that we
7 had advised jails they could put in their handbooks.

8 Q. And did you advise the jails -- you indicated that
9 you advised the jails as to information that could be put
10 in their handbooks. Was the information that you provided
11 to them more than what you had just seen on page 10?

12 A. Yes.

13 Q. When you completed your annual inspections, what laws
14 or regulations were you operating under?

15 A. Wisconsin Administrative Code DOC 350.

16 Q. What kinds of things does DOC 350 require?

17 A. Well, there's a large number of requirements, but it
18 covers food service, living conditions, discipline,
19 physical plant.

20 Q. Were the -- you indicated the general familiarity
21 with PREA. Are there requirements of PREA included
22 underneath DOC 350?

23 A. No. PREA is not referenced in 350.

24 Q. Now, switching gears a little bit, you completed
25 annual inspections for the Polk County Jail from 2010 to

1 2015, you indicated?

2 A. Yes.

3 Q. Did you -- were there any recurring issues that the
4 Polk County Jail had?

5 A. Two that I recall were staffing and supervision and
6 wellness checks.

7 Q. Explain the staffing and supervision concern.

8 A. Well, the county board only approves X number of
9 staff for the jail and they had -- which did not allow
10 them to have supervision around the clock as far as
11 sergeants, nor did it allow them to have specialty
12 positions. So the sergeants they did have were actually
13 doing the work of those specialty positions that many
14 jails have.

15 Q. And did that -- the staffing concern, was that an
16 issue? Do you recall which years exactly that was an
17 issue?

18 A. I don't without looking. For the record, that's a
19 recommendation versus a -- we don't control their
20 staffing. There's no numbers dictated by code.

21 Q. What would be indicating a concern with -- what would
22 be the word -- strike that. What is the concern with low
23 staffing numbers?

24 A. Obviously you need the correct number of staff in a
25 jail to insure that all activities are met, the rounds are

1 done, enough people respond to emergencies. But I think
2 specifically I noted supervision.

3 Q. And does that provide safety issues?

4 THE COURT: Let's ask it differently. Why did
5 you think it was a concern that there wasn't adequate
6 staffing of supervisors?

7 THE WITNESS: What --

8 THE COURT: Why did you note it as a concern?

9 THE WITNESS: Basically they weren't able to
10 provide a sergeant on all their shifts; so there was no
11 supervision available on-site, which was a concern.

12 BY MS. BANNINK:

13 Q. Showing you what's been marked as Exhibit 40, can you
14 tell me what this document is?

15 A. It's a 2010 jail inspection report.

16 Q. And is this something that you created?

17 A. It should be. You can look at the signature just to
18 verify. Yes.

19 Q. Turning to page 4, which is Bates 3432, does it look
20 like this is a document you created?

21 A. Yes.

22 Q. This would have been your report from 2010?

23 A. Yes.

24 Q. Drawing your attention to page 3, did you note any
25 additional concerns, other than staffing, in this

1 inspection?

2 A. Yes.

3 Q. And what concerns did you note?

4 A. I recommended additional cameras and recommending
5 that when they do wellness checks that they actually enter
6 the units so they insure they look into every cell and
7 area.

8 Q. Are you aware of whether or not, during your
9 inspections from 2010 to 2015, you noted any areas of
10 noncompliance?

11 A. Without looking at the document, I don't recall.

12 Q. I'm showing you what's been marked as Exhibit 41.
13 This appears to be another of your inspection reports,
14 correct?

15 A. Yes.

16 Q. And from 2011?

17 A. Yes.

18 THE COURT: Could I ask counsel how much more you
19 have of this witness?

20 MS. BANNINK: I'm almost done.

21 THE COURT: You're almost done?

22 MS. BANNINK: Yes.

23 THE COURT: All right.

24 BY MS. BANNINK:

25 Q. Showing you Bates page 3463, does that refresh your

1 recollection with regards to whether you had indicated any
2 areas of noncompliance?

3 A. Yes.

4 MR. BOHL: Excuse me. What page number was that?

5 MS. BANNINK: 3463.

6 BY MS. BANNINK:

7 Q. And what was the issue of noncompliance?

8 A. They did not have a staffing agreement with the
9 county board, which is required by code if you're going to
10 double cell.

11 MS. BANNINK: No other questions.

12 THE COURT: All right. We will take our
13 afternoon break. We'll reconvene at ten minutes to four
14 and we'll see you then. All rise, please.

15 (Jury out at 3:30 p.m.)

16 THE COURT: I apologize for your having to come
17 back. But if you could be back here in that seat at ten
18 to, that would be appreciated. Thank you.

19 If the parties want to be seated for a moment. We
20 seem to have developed a disagreement over what was
21 stipulated or even what stipulation means. The
22 stipulation was clearly about admission.

23 You can go ahead. It's fine.

24 The stipulation was clearly about admission. I had
25 originally noted that there was still an open question as

1 to Exhibit 1 and 2, but I was told there had been a
2 stipulation and that they were now admitted. Is that
3 correct?

4 MR. CRANLEY: That's correct as to 1 and 2.

5 THE COURT: All right. I was told that 16 is
6 still open, but that the relevance objection was
7 withdrawn. And 17 and 18 I had noted originally was
8 stipulated for admission, but at sidebar I was told by
9 counsel for the County that -- I guess I'm not sure what
10 you meant when you agreed to stipulate to those or perhaps
11 you're saying you didn't stipulate to them.

12 MR. CRANLEY: My recollection is, Your Honor,
13 that there were a number of -- several documents like that
14 where we had objected, you overruled our objection, and so
15 that's where they stand. We didn't stipulate to their
16 admission.

17 THE COURT: I would not have written down
18 *stipulation* unless someone had told me during this process
19 that -- in fact it was at the first day of trial that it
20 had been stipulated to admission. Do the plaintiffs have
21 a different recollection? Do they agree that it's not
22 admitted or it wasn't stipulated to?

23 MS. BANNINK: As to which exhibits?

24 THE COURT: 17 and 18.

25 MS. BANNINK: I do not recall a conversation with

1 regards to the stipulation. I know that they filed the
2 motions in limine. I'm not sure --

3 THE COURT: That's fine.

4 MS. BANNINK: -- beyond that.

5 THE COURT: So 17 and 18 will not be deemed
6 admitted. I did allow plaintiffs to use portions of
7 Exhibit 18 I believe and the question is as to whether or
8 not I'm going to admit it into evidence; and, if so, what
9 parts.

10 MS. BANNINK: It was my understanding that Your
11 Honor had admitted it.

12 THE COURT: I allowed it to be shown to the jury
13 after a foundation had been laid. I had not ruled on its
14 formal admission. The question is whether I admit some or
15 all of it into evidence.

16 MR. WEIDNER: Your Honor, if I might address
17 that. I went through --

18 THE COURT: Portions of it with --

19 MR. WEIDNER: -- portions of it and rather
20 extensively read aloud from it with the understanding that
21 that was admitted.

22 THE COURT: Well, I didn't rule on admission. I
23 told you you could use it with that witness. It was
24 Nargis, wasn't it?

25 MR. WEIDNER: Yes, it was, Your Honor.

1 THE COURT: All right. So you went through
2 portions of that with Nargis and the question is whether I
3 admit some or all of Exhibit 18, since apparently there
4 was not a stipulation, contrary to what I thought I had
5 been told. And your basis for moving its admission is
6 what?

7 MR. WEIDNER: It's a written document provided in
8 the typical, ordinary course of the business for his
9 investigation held that they rely on and refer to
10 throughout their procedures and process.

11 THE COURT: The concern I have, and it was the
12 objection raised as to prejudice that I had reserved on,
13 is the same one I expressed in front of the jury this
14 afternoon and that is undue emphasis on the Jorgenson
15 investigation. I think the jury has heard ample amount.
16 I don't know why I would emphasize it more by giving them
17 the entire investigative report, which may well have
18 information that really isn't relevant at all. But I'm
19 very concerned about overemphasizing it, so at this point
20 that exhibit is out, unless there's some reason to allow
21 you to provide those portions that the jury was allowed
22 to see.

23 And while you characterize them as *extensive*, there
24 was a few pages and portions of pages that they actually
25 saw. And I don't think it really changes the dynamic by

1 simply letting that testimony stand through Nargis. That
2 testimony, I agree, is relevant. But the entire document
3 I'm not sure has sufficient relevance to overcome
4 prejudice or at least to place undue emphasis on what, at
5 best, is a satellite event showing knowledge by the
6 County. So at this point it is not admitted, but I will
7 continue to reserve if there's some greater relevance that
8 I'm not aware of that would overcome potential prejudice.

9 Since we're on the subject then, the other exhibits I
10 do not have admitted, in addition to 17 and 18, are 23,
11 24, 27, 28, 29, 35, 36, 37, 38, 47, 48, 49 through 60, 73,
12 74, 83, 87 through 102, 104 and 105. Any corrections to
13 that list for the plaintiff?

14 MS. BANNINK: 104 and 105 were stipulated to,
15 correct?

16 MR. CRANLEY: That's correct. Those are the jail
17 videos.

18 THE COURT: Any other corrections for the
19 plaintiff?

20 MS. BANNINK: It had been my -- I don't know that
21 anyone has addressed Exhibit 17. I had thought that
22 Exhibit 17 was admitted.

23 THE COURT: That was in the category of
24 stipulated --

25 MR. CRANLEY: That is correct.

1 THE COURT: -- so it is stipulated to admission.
2 All right. Perhaps what happened is I somehow had heard
3 both when you told me 17 was stipulated to.

4 MS. BANNINK: And did you indicate 20 through 24
5 were not stipulated?

6 THE COURT: I had 23 and 24 were not.

7 MS. BANNINK: 23 and 24. Okay. And those were
8 withdrawn, so --

9 MR. CRANLEY: And 29 was withdrawn as well, Your
10 Honor.

11 THE COURT: 23 and 24 are withdrawn and 29 I have
12 as withdrawn. All right. Any other corrections for the
13 plaintiff?

14 MS. BANNINK: 27 and 28 were also withdrawn.

15 THE COURT: Are you in agreement on that one as
16 well?

17 MR. CRANLEY: Yes, Your Honor.

18 THE COURT: All right. I will deem those
19 withdrawn.

20 MS. BANNINK: I think there were actually quite a
21 few on your list.

22 THE COURT: And next were 35 and 36, which are
23 declarations of Nargis.

24 MS. BANNINK: 35 and 36 were withdrawn.

25 THE COURT: 37, 38 I assume are the same?

1 MS. BANNINK: Same.

2 THE COURT: I show the next open exhibit was 51,
3 the DCI investigation photos.

4 MS. BANNINK: And then so we end with Exhibit 46
5 and then all exhibits from 47 to 60 were withdrawn.

6 THE COURT: Are you in agreement?

7 MR. CRANLEY: That's correct.

8 THE COURT: Very good. I had objections
9 withdrawn. That explains the confusion. You said through
10 60?

11 MS. BANNINK: Yes.

12 THE COURT: Very good. Thank you. That would
13 leave 73. I'm not sure that that's going to ever come in.

14 MS. BANNINK: 73, 74 were withdrawn.

15 THE COURT: All right. And 87 through 101, which
16 are just deposition transcripts.

17 MS. BANNINK: Were withdrawn.

18 THE COURT: And are 87 and 88, which are notice
19 of claims?

20 MS. BANNINK: Withdrawn.

21 THE COURT: All right. And 102?

22 MS. BANNINK: And 102 is withdrawn.

23 THE COURT: All right. As to defendants', I have
24 501 open.

25 MR. CRANLEY: That was withdrawn.

1 THE COURT: 501 was withdrawn. All right. I
2 have the next exhibits, 503 through 508, admitted.

3 MR. CRANLEY: 502 through 508, yes.

4 THE COURT: 503 through 508 admitted. Then 509
5 and 510 are open? I don't have any notation as to those.

6 MR. CRANLEY: What are those?

7 THE COURT: *Polk County Jail Inmate Handbook* and
8 certificates of training completed by Darryl Christensen.

9 MR. CRANLEY: Those are duplicates of others, so
10 those are withdrawn.

11 THE COURT: All right. I have 511 through 514
12 admitted by stipulation.

13 MR. CRANLEY: Correct.

14 THE COURT: And 515 through 521 are open.

15 MR. CRANLEY: Through 529 actually are all out.

16 THE COURT: I have through 528 out. So 515 are
17 all withdrawn through 529?

18 MR. CRANLEY: Yes.

19 THE COURT: All right. Very good. I still have
20 an open question, although there's been a stipulated
21 admission of 350, as to whether the entire exhibit should
22 go in. 531, the national standards, are open at this
23 point.

24 MR. CRANLEY: Everything else on our list, Your
25 Honor, was those types of documents and they were all

1 withdrawn; only used for impeachment, if it at all.

2 THE COURT: Okay. So 530, is that withdrawn or
3 is that stipulated to admission?

4 MR. CRANLEY: We did stipulate to it.

5 THE COURT: That's fine. So from 531 through
6 547 --

7 MR. CRANLEY: Through 546.

8 THE COURT: -- through 5 --

9 MR. CRANLEY: Through 546.

10 THE COURT: -- through 546 -- all right. I'm
11 with you -- those are all withdrawn.

12 MR. CRANLEY: Correct.

13 THE COURT: Thank you. I appreciate your taking
14 the time to go through this. I have 547 admitted by
15 stipulation, 548 through 553 admitted by stipulation, and
16 then 554 is a demonstrative that may or may not be
17 offered.

18 MR. CRANLEY: Correct.

19 THE COURT: All right. Very good. Anything more
20 for the plaintiffs before we take our break?

21 MS. BANNINK: I have written on my exhibit list
22 that 31 was admitted over objection. Yeah, I recall
23 Mr. Weidner moving to admit 31 and it was admitted over
24 objection. I'm not sure if you had listed that one.

25 MR. WEIDNER: It was a handwritten --

1 THE COURT: Yes, it was admitted. 31 was
2 admitted through Moe. That's correct. Anything more for
3 the plaintiff? This isn't your final opportunity if you
4 want to raise something at another break, but I'd like to
5 provide the parties with some break.

6 MS. BANNINK: Nothing further.

7 THE COURT: All right. Anything more for the
8 defense.

9 MR. BOHL: Not from the County.

10 THE COURT: We'll reconvene at five to hour. And
11 would you let the jury know that we're going to be an
12 extra five minutes?

13 (Recess at 3:42 p.m. until 3:55 p.m.)

14 THE COURT: Just for the parties' benefit in
15 thinking about the remaining jury instruction issues, I
16 think it may make more sense for me to lay out what I
17 understand the law is in writing. So rather than talk
18 this evening, I will endeavor to get that opinion out to
19 you and then we'll talk about that and any other issues
20 the parties may still have tomorrow.

21 MR. BOHL: Your Honor, might I attempt to save a
22 little time? I would like to show Mr. Hompe Exhibits 43
23 through 46 simply for the purpose of refreshing his
24 recollection. I want to show him a sentence on each one.
25 It's going to be quicker for everyone if I just give him

1 the paper.

2 THE COURT: You can absolutely do that at the
3 beginning of your testimony. Just come up, set them down.
4 And then when you get to it, ask him. If he doesn't
5 recall, you can point him to the page.

6 MR. BOHL: Okay.

7 THE COURT: All right. Very good. We can bring
8 the jury out.

9 MR. CRANLEY: Your Honor, one other issue with
10 the deposition. I don't know if we're going to get to the
11 video deposition this afternoon still.

12 MR. WEIDNER: Hoping to.

13 MR. CRANLEY: Because there is some material in
14 there that pertains to Jorgenson and the investigation
15 relating to --

16 THE COURT: I've ruled on all the objections. If
17 it's in there, it's staying in there, unless you had
18 already objected to it.

19 MR. CRANLEY: No, but the deposition was done
20 before we had your ruling on the motions in limine.

21 THE COURT: You're saying it's inconsistent with
22 one of my motions in limine --

23 MR. CRANLEY: Well, your motions in limine --

24 THE COURT: -- or are you talking about my ruling
25 this afternoon that I didn't want it dwelled on any more?

1 MR. CRANLEY: No, a week or so ago when you gave
2 us rulings on the motion that kind of pared down the
3 evidence of some of these prior acts. We didn't have that
4 at the time we took the deposition.

5 THE COURT: That's why we do the preparation we
6 do in advance and why I provided everyone with what would
7 be allowed. Other than addressing the objections and
8 removing those materials out, if you felt it needed to be
9 pared down substantially, you should have raised that at
10 that time. Do you have sufficient witnesses to complete
11 that portion?

12 MR. WEIDNER: Which portion, Your Honor?

13 THE COURT: The remainder of the day through 5:30
14 without using the --

15 MR. WEIDNER: We are going to release two
16 witnesses, Your Honor, because they'll be redundant, and
17 we'll play the video in their stead.

18 THE COURT: And then who will you have tomorrow?

19 MR. WEIDNER: I will have Jeff Eiser, our expert
20 witness, and that's it.

21 THE COURT: And he's not available to testify
22 tonight?

23 MR. WEIDNER: Today, correct.

24 THE COURT: All right. I'm sorry, but that would
25 have been something you needed to raise before this, so

1 I'm going to allow them to go ahead with that.

2 MR. CRANLEY: That's fine.

3 THE COURT: You can bring out our jury.

4 (Jury in at 4 p.m.)

5 THE COURT: And you may proceed with
6 cross-examination -- direct. I'm sorry.

7 CROSS-EXAMINATION

8 BY MR. BOHL:

9 Q. Good afternoon. I'd like to get your current title
10 correct. What is your current title?

11 A. Corrections complaint examiner.

12 Q. Is it okay if I call you *Mr. Hompe*?

13 A. Sure.

14 Q. Mr. Hompe, you were deposed in this case, were you
15 not?

16 A. Yes.

17 Q. Do you recall being asked this question and giving
18 this answer:

19 "QUESTION: Would you classify Polk County as one of
20 the better-run jails in your area?"

21 A. Yes, sir, I recall that.

22 Q. "ANSWER: Yes."

23 A. Correct.

24 Q. That was true when you said it, right?

25 A. Yes.

1 Q. And you haven't changed your mind since then, have
2 you?

3 A. No.

4 Q. The Polk County Jail was one of the better-run jails
5 in your area, right?

6 A. Correct.

7 Q. Now, can you refresh our recollection on what your
8 area was?

9 A. Western Region, 17 counties in Wisconsin.

10 Q. So that was 17 county jails and you had some juvenile
11 facilities, too, didn't you?

12 A. Yes.

13 Q. Now, I'd like to just briefly run through your
14 substantial credentials. You were a correctional officer
15 at the Winnebago Correctional Center?

16 A. Yes.

17 Q. What kind of facility is that?

18 A. Minimum security male.

19 Q. You were captain at Taycheedah?

20 A. Yes.

21 Q. By "captain," I mean the rank of captain.

22 A. Yes.

23 Q. What is Taycheedah?

24 A. Female correctional institution.

25 Q. Maximum security?

1 A. At that time it was max, medium and minimum.

2 Q. And you were also warden of Stanley Correctional?

3 A. Yes.

4 Q. When were you warden of Stanley Correctional?

5 A. Excuse me?

6 Q. When were you warden of Stanley?

7 THE COURT: What dates, approximately.

8 A. 2007 to 2009.

9 Q. Now, am I correct that warden is the captain of the
10 ship, the highest rank?

11 A. At the facility, yes.

12 Q. You ran the Stanley Correctional facility?

13 A. Yes.

14 Q. Now, what kind of facility is that, in layman's
15 terms?

16 A. Medium security male.

17 Q. How big is the population?

18 A. 1,550.

19 Q. How big was the staff that you supervised?

20 A. 288.

21 Q. Now, going way back in time there was a time when you
22 were a lowly detention facility specialist?

23 A. Yes.

24 Q. When was that?

25 A. It would have been 2009 through this past August.

1 Q. Would it be fair to say that you moved up from the
2 bottom to the top of the ranks in the Department of
3 Corrections?

4 A. At one time, yes.

5 Q. How long were you inspector?

6 A. From December 2009 until this past August. I'm not
7 sure what that totals up to be.

8 Q. Now, you conducted annual inspections of the Polk
9 County Jail?

10 A. Yes.

11 Q. And the purpose of the inspection was to determine
12 whether the Polk County Jail complied with DOC 350 and any
13 applicable Wisconsin statutes, right?

14 A. Yes.

15 Q. Can you tell us, in layman's terms, what DOC 350 is?

16 A. It's the administrative code chapter that governs
17 county jails.

18 Q. And a county jail is required by law to comply with
19 DOC 350; is that correct?

20 A. Yes.

21 Q. And it covers -- well, I guess there are 35 different
22 sections; does that sound about right?

23 A. Yes.

24 Q. And it goes from construction plans all the way down
25 to canteen, right?

1 A. Yes.

2 Q. And when you conduct these annual inspections, do you
3 have sort of a checklist to determine whether each
4 important requirement was being complied with?

5 A. Yes.

6 Q. Now, I'd like to approach the witness, Your Honor,
7 and give you Exhibits 43 through 46, but let me back up in
8 response to one of your questions on direct examination.
9 I believe you said you didn't recall the results of every
10 annual inspection; is that true?

11 A. Correct.

12 Q. I'm going to ask you how the Polk County Jail did in
13 the 2013 inspection. And if you need to refresh your
14 recollection, please look at Exhibit 43.

15 A. Well, generally I can say substantially compliant.
16 Without going through every topic, I can't tell you what
17 was met or not met in every area.

18 Q. But you can say that your overall verdict was that
19 "The Polk County Jail is substantially code compliant as
20 approved to hold adult offenders," right?

21 A. Yes.

22 Q. That's what you wrote in your report?

23 A. Yes.

24 Q. Now, how about 2014, did you reach the same
25 conclusion at the end of your 2014 audit?

1 A. Yes.

2 Q. How about 2015, did you reach the same conclusion at
3 the end of your 2015 audit?

4 A. Yes.

5 Q. How about 2016, did you reach the same conclusion at
6 the end of your 2016 audit?

7 A. Yes, with areas of concerns noted.

8 Q. And what were those areas of concerns that you noted?

9 A. That was the supervision that we had previously
10 discussed, limited issues with sanitation, the time frames
11 for well-being checks and the fact that they were not
12 taking place from within the living unit, and again just a
13 recommendation for additional cameras.

14 Q. None of those related to the prevention of sexual
15 assaults, do they?

16 A. You're asking my opinion?

17 Q. Yes.

18 A. It could be.

19 Q. And which one could be?

20 A. Cameras.

21 Q. And this criticism was made by you in 2016?

22 A. Yes. I think it's documented previous as well.

23 Q. Now, you're familiar with the interior of the Polk
24 County Jail?

25 A. Yes.

1 Q. You've been there many times?

2 A. A few, yes.

3 Q. Would you describe it as a modern facility?

4 A. Yes.

5 Q. Isn't it true that inspectors of the Department of
6 Corrections consulted with the Polk County architects in
7 the design of the jail?

8 A. Yes.

9 Q. Is that a good thing or a bad thing?

10 A. A good thing, I would assume.

11 Q. Was Polk County required to consult with the DOC when
12 it built the jail?

13 A. Yes, by code.

14 Q. And it did that?

15 A. Yes.

16 Q. Now, let me direct your attention to a particular
17 area that I believe we all understand is the bubble, which
18 looks into a number of pods, including the female max pod.
19 Are you familiar with that area?

20 A. The control center?

21 Q. Not the control room; max --

22 THE COURT: You may think of it as the control
23 center. Not the principal one next to the intake area,
24 but the bubble.

25 THE WITNESS: Okay. The max control.

1 MR. BOHL: Yes, exactly.

2 BY MR. BOHL:

3 Q. Is there anything about max control that violates DOC
4 350?

5 A. Not to my knowledge.

6 Q. Now, you're aware that an officer could sit in the
7 bubble and visually inspect a number of different pods,
8 right?

9 A. Yes.

10 Q. Male pods?

11 A. Yes.

12 Q. And female pods?

13 A. Yes.

14 Q. That doesn't violate DOC 350, does it?

15 A. No.

16 Q. That's a fairly common practice, isn't it?

17 A. Yes.

18 Q. Does staffing the bubble with one officer violate DOC
19 350?

20 A. No.

21 Q. That would be a fairly typical and common practice in
22 Wisconsin jails?

23 A. Yes.

24 Q. Now, there's a provision of DOC 350 that requires
25 regular wellness checks at irregular intervals, right?

1 A. Yes.

2 Q. And the -- there's a time period there, right?

3 A. Yes.

4 Q. What's the time period?

5 A. 60 minutes or less.

6 Q. But the inspections are supposed to be at irregular
7 intervals, right?

8 A. Yes.

9 THE COURT: Every 60-minute period?

10 THE WITNESS: Yes.

11 THE COURT: And *wellness* being check on the
12 officer in the bubble or what's the wellness for?

13 THE WITNESS: Check on the inmate.

14 THE COURT: So the person in the bubble should
15 check on each inmate. What do you mean by a wellness
16 check?

17 THE WITNESS: It's basically -- it's an overall
18 accountability check, first of all, to make sure the body
19 is there living and breathing and okay, they're safe. And
20 obviously when they do those rounds they would also do a
21 security check of the facility. But it's conducted by an
22 officer that should be going into the housing unit and
23 checking on those individuals.

24 THE COURT: So inside each pod?

25 THE WITNESS: Correct.

1 BY MR. BOHL:

2 Q. And this is supposed to take place within 60
3 minutes --

4 A. Yes.

5 Q. -- at irregular intervals?

6 A. Yes.

7 Q. And the code specifically requires irregular
8 intervals, right?

9 A. Yes.

10 Q. One of the reasons why the code requires irregular
11 intervals is so the inmates won't know when the guard is
12 coming, right?

13 A. Yes.

14 Q. And one of the reasons why you don't know -- why you
15 don't want the inmate to know when the guard is coming is
16 because if they're doing something they're not supposed to
17 be doing, you don't want to give them an opportunity to
18 hide it, right?

19 A. Yes.

20 Q. And another reason why you want the inspections to be
21 at irregular intervals is because you don't want the
22 inmates to be able to set up an ambush?

23 A. Yes.

24 Q. And security for the guards in jails and prisons,
25 that's always an issue, right?

1 A. Absolutely.

2 Q. There can be physical assaults on the guards, right?

3 A. Yes.

4 Q. Now, in response to questions on direct examination
5 you mentioned a course in inmate manipulation?

6 A. Yes.

7 Q. Could you describe that? That was a course of study?

8 A. It's a training class for correctional staff.

9 Q. How long does this class take?

10 A. Well, I mean, depending on the instructor, you could
11 run it for two hours, you could run it for eight hours,
12 depending on the content you want to share.

13 Q. Is inmate manipulation a recurring issue in
14 corrections?

15 A. Yes.

16 Q. Can you explain that to us?

17 A. Well, generally inmates attempt to familiarize
18 themselves with staff in order to gain information about
19 them and become more familiar with them, which could lead
20 to having some power over the staff. That's -- that
21 covers at least a portion of that training.

22 Q. Is this a recurring problem in the correctional
23 setting?

24 A. Yes.

25 Q. Guards and correctional officers are taught not to

1 divulge personal information about themselves in dealing
2 with the inmates?

3 A. Yes.

4 Q. And does that have something to do with this inmate
5 manipulation?

6 A. Yes, avoiding it.

7 Q. Can you explain that to us?

8 A. Can I give you an example?

9 Q. Sure.

10 A. Basically an example would be not talking about your
11 family vacation or that you're going on vacation or have
12 been on vacation, because then they have additional
13 information about you that they have no business knowing.
14 The next thing you know, they try to use that against you,
15 you know.

16 A good correctional officer would not necessarily
17 fall for that, but they could attempt to manipulate the
18 officer using that information: say, well, I know this
19 about you and you talked about this; and if you don't do
20 this for me, I'm going to tell them that I know this; and
21 how else would I know this unless you inappropriately
22 discussed it in front of me.

23 Q. Is the issue of inmate manipulation taught in the DOC
24 certification training for jailers?

25 A. DOJ does the certification for county jails. They

1 have a professionalism training and inmate supervision
2 training. It's not necessarily titled *avoiding*
3 *manipulation*; same principle.

4 THE COURT: Just so we're clear, DOJ is the
5 Wisconsin Department of Justice?

6 THE WITNESS: Yes.

7 BY MR. BOHL:

8 Q. But the issue of inmate manipulation is taken up in
9 the certification training, even if it's under another
10 heading?

11 A. Yes.

12 Q. Now, at your deposition you said there were three
13 things a county jail should do to prevent sexual
14 misconduct: it should, one, inform the inmates of their
15 rights; two, train the staff on how to handle reporting;
16 and three, make sure you have an investigative process.
17 Does that sound about right?

18 A. Yes.

19 Q. The DOC, under 350, has to approve county jail
20 policies, right?

21 A. The manual, yes.

22 Q. And the Polk County manual was in compliance with DOC
23 350, wasn't it?

24 A. Yes.

25 Q. Weren't all three of those issues dealt with in the

1 Polk County policies and procedures?

2 A. I don't recall specifically.

3 Q. Well, if they hadn't been, they shouldn't have been
4 approved, right?

5 A. Well, the three things you mentioned are not -- those
6 not 350 issues; those are PREA issues.

7 Q. Well, let me ask it a different way: If the Polk
8 County policies and procedures addressed all three of
9 those issues, that would be a good thing, right?

10 A. Yes.

11 Q. And if Polk County put PREA language in its inmate
12 handbook, that would be a good thing?

13 A. Yes.

14 Q. And if Polk County amended its supervision policies
15 to put PREA language in that supervision policy, that
16 would be a good thing?

17 A. Yes.

18 Q. Now, one provision in PREA requires that when a male
19 officer enters a female pod that the male officer announce
20 the fact that they're coming in, right?

21 A. I'm aware of that, yes.

22 Q. That violates DOC 350, doesn't it?

23 A. That doesn't violate the code. As you discussed
24 earlier, it may violate the intent.

25 Q. The intent is that the inspection be a surprise,

1 right?

2 A. Yes.

3 MR. BOHL: That's all I have. Thank you, very
4 much.

5 THE COURT: All right. Any recross? I'm sorry,
6 did you have questions?

7 MS. MILLS: I did not.

8 REDIRECT EXAMINATION

9 BY MS. BANNINK:

10 Q. Mr. Bohl went through the various policies or your
11 various jail inspections spanning from 2010 through 2015,
12 correct?

13 A. I have 2013 through '16 in front of me.

14 Q. '13 through '16. Okay. So starting in 2013, did you
15 indicate whether supervision was a concern in your
16 summary?

17 A. Yes, I did.

18 Q. And the same in 2014?

19 A. Yes.

20 Q. '15?

21 A. Yes.

22 Q. And '16?

23 A. Yes.

24 Q. And again you had indicated that the policies or
25 the -- you operate under DOC 350, correct?

1 A. Yes.

2 Q. And that does not -- that does not include PREA
3 standards; is that right?

4 A. Correct.

5 Q. With regards to the specific PREA provision where a
6 male officer is supposed to announce presence prior to
7 entry of a female pod, have you provided information on
8 ways that jails can comply with this provision,
9 alternative ways to comply with this?

10 A. I have.

11 Q. And what would that be?

12 A. Either make an announcement at the beginning of the
13 shift that both sexes of officers could be in your
14 presence or put it in the handbook.

15 Q. And that would avoid the security concerns indicated
16 by Mr. Bohl?

17 A. Yes, that would. That would eliminate the need for
18 the announcement.

19 Q. The other part of the course that you had provided
20 to -- that you had trained on, did that include
21 professionalism?

22 A. Yes.

23 Q. And explain what that would consist of.

24 A. Well, just maintaining your professional center, not
25 getting either too weak or too overly strong with the

1 inmates. Some staff could have a habit to be overly
2 strict when there's not a need to and some may be overly
3 lenient. And again, those things can be used against you
4 at a later time from those inmates.

5 Q. Is it possible that divulging information could
6 lead -- divulging personal information from a jailer could
7 lead to security threats not only from inmates attempting
8 to manipulate jailers, but also jailers creating too close
9 relationships with inmates?

10 A. Yes.

11 MS. BANNINK: No further questions.

12 THE COURT: Before I turn you over for redirect,
13 just to get back to this wellness check aspect, is that
14 appropriate to be done by the person in the bubble; in
15 other words, an officer needs to do it at random times --

16 THE WITNESS: Correct.

17 THE COURT: -- every 60 minutes? So it's fine if
18 it's the same person who is generally in the bubble?

19 THE WITNESS: It can be any staff member. But if
20 you have a max control bubble, that's a maximum security,
21 it shouldn't be left.

22 THE COURT: You shouldn't leave the bubble --

23 THE WITNESS: Right.

24 THE COURT: -- during your shift?

25 THE WITNESS: Right.

1 THE COURT: So you would expect normally another
2 officer would come in at random?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 MR. BOHL: Nothing further.

6 THE COURT: All right. You may step down then
7 unless there's questions from the jury. Thank you.

8 (Witness excused at 4:23 p.m.)

9 THE COURT: And you may call your next witness.

10 MS. BANNINK: Lynelle Manning.

11 MR. BOHL: Your Honor, could we approach a
12 sidebar?

13 THE COURT: Yes. Ms. Manning, if you could wait
14 a moment, we will get to you.

15 (At sidebar.)

16 MR. BOHL: Your Honor has ruled Ms. Manning
17 cannot testify about her sexual relationship with
18 Mr. Christensen unless it took place in the jail. She was
19 deposed. And the way I read the deposition, she said
20 there was just a back rub.

21 THE COURT: I'm not sure I understand. What's
22 your concern? If I've ruled, it's not going to come into
23 evidence.

24 MR. BOHL: My concern is they're calling her.

25 THE COURT: You're not calling her for that

1 purpose obviously?

2 MS. BANNINK: No, Your Honor.

3 THE COURT: Okay. Very good. Thank you.

4 (End sidebar.)

5 THE COURT: And if you could come forward -- I
6 realize you've got to get everyone to do that -- and stand
7 before the court reporter and she will swear you in.

8 **LYNELLE MANNING, PLAINTIFFS' WITNESS, SWORN**

9 THE COURT: And if you could just move forward
10 towards the mic. And you may proceed, Counsel.

11 DIRECT EXAMINATION

12 BY MS. BANNINK:

13 Q. Please state your name.

14 A. Lynelle Manning.

15 Q. And were you employed by the Polk County Sheriff's
16 Department?

17 A. Yes, I was.

18 Q. When were you employed with the Polk County Sheriff's
19 Department?

20 A. May 11th of 2015 to January 25th of 2016.

21 Q. In what capacity were you employed?

22 A. A jailer.

23 Q. Tell me about the formal training that you received
24 while employed with the Polk County Jail.

25 A. I believe there was a checklist of different items we

LYNELLE MANNING - DIRECT

1 had to go through regarding process. I followed around a
2 senior jailer who had been there for a significant period
3 of time. And then after a couple weeks they let me work
4 on my own with them following me until I was released to
5 my own post to work on my own.

6 Q. Did you ever go on to any formal training outside of
7 the jail?

8 A. Not through the jail, no.

9 Q. Did you ever attend what's called a *jail school*?

10 A. I did not.

11 Q. Were you -- did you have an intent to attend the jail
12 school?

13 A. Yes.

14 Q. Tell me about that.

15 A. To my understanding it was the jail's responsibility
16 to enroll me and send me to jail school. Due to staffing
17 issues, I was never sent to jail school.

18 Q. And you were employed for how long?

19 A. About 20 months.

20 Q. Does that mean that you were never certified as a
21 correctional officer --

22 A. Correct.

23 Q. -- during that 20-month period?

24 A. Correct.

25 Q. Is there a time when you were working day shift?

1 A. Yes.

2 Q. Explain what your training was during that day shift.

3 A. For the first --

4 Q. Sorry. Go ahead.

5 A. -- for the first couple weeks I specifically worked
6 with Mike Ottosen, followed him around. He showed me what
7 I was supposed to do regarding cleaning, mail, basic
8 process, intake procedure. That was the initial start of
9 my training. He signed off on it once. I had efficiently
10 done those duties on my own.

11 Q. And how long were you in that day shift?

12 A. Three and-a-half months.

13 Q. And then what happened when you moved to nights?

14 A. As far as what?

15 Q. Training.

16 A. I was on my own post. The night crew that I worked
17 with, we trained, you know, with POSC independently and
18 they worked with me because I had no formal training. So
19 to insure the safety of our fellow officers, they worked
20 with me specifically.

21 THE COURT: I think you said you trained with
22 POSC?

23 THE WITNESS: Yes.

24 THE COURT: What is that?

25 THE WITNESS: Principles of Subject Control,

1 which is the standard jail I guess physical ability to
2 restrain an inmate or --

3 THE COURT: Or how to properly stand next to them
4 and keep them in control?

5 THE WITNESS: Correct.

6 THE COURT: And that was physical training that
7 other officers gave you when there was time?

8 THE WITNESS: Correct. Yes.

9 THE COURT: Thank you.

10 BY MS. BANNINK:

11 Q. Are you familiar with the Prison Rape Elimination
12 Act?

13 A. Yes, I am.

14 Q. How are you familiar with this Act?

15 A. I have a bachelor's degree in criminal justice.

16 Q. Did you receive any training with regards to this Act
17 from the Polk County Jail?

18 A. Not that I recall.

19 Q. Did you participate in the intake procedure?

20 A. Yes.

21 Q. What did that consist of?

22 A. Taking the inmate out for medical questions, basic
23 demographic information, fingerprints, photo, basically to
24 put them in our system.

25 Q. Did you ask them questions?

1 A. Yes.

2 Q. How long did that questioning portion last?

3 A. Anywhere between 45 minutes to an hour and a half,
4 depending on how compliant the individual was.

5 Q. Intake procedure, was this something you participated
6 in with regularity?

7 A. Yes.

8 Q. At the time of intake, did you provide an inmate
9 handbook?

10 A. Yes.

11 Q. And the jury has seen that, which is Exhibit 10. I
12 won't show it again, for efficiency purposes. Did you
13 read through the contents of that handbook?

14 A. I did when I first started.

15 Q. Did you say did or didn't?

16 A. I did.

17 Q. Did you read through that with the inmates?

18 A. No.

19 Q. At the time of intake did you provide the inmates
20 with any information with regards to PREA?

21 A. Not that I recall.

22 Q. Did you show them any videos about PREA?

23 A. No.

24 Q. Did you tell them that they had -- that the Polk
25 County Jail has a zero tolerance policy of sexual assault

1 towards inmates?

2 A. No.

3 Q. Did you tell them that they have a right to be free
4 from sexual assault?

5 A. No.

6 Q. Did you explain to the inmates what sexual abuse or
7 harassment consists of?

8 MR. BOHL: Objection. Leading.

9 THE COURT: I'll sustain the objection. It's
10 late in the second day to start making leading objections,
11 but you're welcome to make them, and that was leading.

12 BY MS. BANNINK:

13 Q. Did you provide any information, given your knowledge
14 of what the Prison Rape Elimination Act consists of, did
15 you provide any information consistent with that Act at
16 the time of intake?

17 A. No.

18 MR. BOHL: That's still leading.

19 THE COURT: It's close, it's closer to, but it is
20 leading. What information did you provide them, if
21 anything, at intake as to PREA?

22 THE WITNESS: Nothing specifically. We gave them
23 the handbook, gave them their information and brought them
24 to their cell.

25 THE COURT: All right. Next question.

1 MS. BANNINK: No further questions.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. BOHL:

5 Q. You have a bachelor's degree in criminal justice?

6 A. Correct.

7 Q. Where did you get that?

8 A. Rasmussen.

9 Q. And where is that?

10 A. Lake Elmo, Minnesota.

11 Q. When did you get that?

12 A. I completed my degree in 2015.

13 Q. What month in 2015?

14 A. September.

15 Q. Do all correction officers in Wisconsin county jails
16 have bachelor's degrees in criminal justice?

17 A. I don't know.

18 Q. You were pretty well qualified, weren't you?

19 A. Yes.

20 Q. Polk County was intending to send you to DOC jail
21 school when the opportunity arose, right?

22 A. That's my understanding.

23 Q. Well, that's what they told you?

24 A. Right.

25 Q. Do you have any reason to believe that wasn't true?

1 A. My understanding is, due to staffing issues, other
2 individuals that were hired after me were sent because I
3 was already on a post and we didn't have staffing to cover
4 individual posts, which is why I was not sent immediately
5 upon implement.

6 Q. Did they tell you whether the fact that you already
7 had a bachelor's degree in criminal justice had anything
8 to do with you not being sent immediately?

9 A. Not that I recall.

10 Q. Now, when you did booking, you gave the prisoners who
11 were booked a copy of the jail manual?

12 A. Yes.

13 Q. And you say you read the manual yourself?

14 A. Yes.

15 Q. Now, the Polk County Jail has a policy and procedure
16 manual, doesn't it?

17 A. Yes.

18 Q. And did you get a copy of that?

19 A. We had a copy available in the booking room.

20 Q. And it was also accessible on the computer, wasn't
21 it?

22 A. Yes.

23 Q. And you read that, didn't you?

24 A. When I first started, yes.

25 Q. When you were working in the Polk County Jail, did

1 you ever hear inappropriate, sexually-verbal exchanges
2 among the jailers?

3 A. Between the jailers or between jail staff and
4 inmates?

5 Q. Between jail staff and inmates.

6 A. No.

7 Q. From time to time you worked with Darryl Christensen?

8 A. Yes.

9 Q. He seemed friendly toward everyone?

10 A. Yes.

11 MR. BOHL: That's all I have.

12 THE COURT: All right. Any redirect? Did you
13 have questions? I apologize, Ms. Mills, I should ask each
14 time. Did you have any follow-up?

15 REDIRECT EXAMINATION

16 BY MS. BANNINK:

17 Q. You indicated that Mr. Christensen was friendly
18 towards staff, correct?

19 A. Correct.

20 Q. Are you aware of how long Mr. Christensen had been
21 employed with the Polk County Sheriff's Department?

22 A. I recall it was a long time, but I don't know
23 specifically.

24 Q. With regards to relationships between staff, were
25 they fairly close?

1 A. Yes.

2 MS. BANNINK: No other questions.

3 THE COURT: All right. You may step down then.

4 Thank you.

5 (Witness excused at 4:35 p.m.)

6 THE COURT: You may call your next witness.

7 MS. BANNINK: Steve Schaefer by video deposition.

8 THE COURT: By video deposition. And while
9 they're queueing that up, you may recall I gave
10 instructions at the beginning of the trial, which may seem
11 a long time ago, although it's only been two days. The
12 instruction was that there would be certain times when you
13 would hear testimony either through reading of transcript
14 or of video of a deposition where a witness is unable to
15 testify. In this case Mr. Schaefer is unavailable, but
16 the parties agreed and they have taken a deposition under
17 oath and you should treat this testimony as if
18 Mr. Schaefer were testifying here in court to the same
19 effect.

20 And whenever you are ready, Counsel, you can queue
21 that up. And you should be able to see it well enough on
22 this monitor. It's really more a matter of listening than
23 what's on.

24 MR. WEIDNER: I think we may need to move the
25 computer quite possibly to here for volume. I'm not sure.

1 THE COURT: If you're going to use it, you can
2 use any mic. I can't really amplify sound.

3 (Video deposition of Steven Schaefer played at
4 4:37 p.m. until. 4:43 p.m.)

5 THE COURT: Why don't we pause it for one moment.
6 Are you able to hear this reasonably well?

7 JURORS: (Nodding.)

8 THE COURT: All right. We've done what we can.
9 We will just leave it at that.

10 (Discussion held off the record.)

11 THE COURT: It seems like something you can hear
12 particularly well, particularly with the assistance of
13 video, but I was just checking to see whether we could do
14 better with the volume.

15 (Video deposition of Steven Schaefer played at
16 4:44 p.m. until 5:32 p.m.)

17 (Sidebar held off the record at 5:30 p.m.)

18 MR. WEIDNER: Your Honor, we could stop at this
19 point.

20 THE COURT: All right. Very good. And if you
21 would please note that just so we're certain where we pick
22 up in the morning. There's about 30 minutes more of this
23 testimony. And so we will start there in the morning and
24 then proceed with the remaining live testimony for the
25 plaintiff.

1 Again this evening -- you're yet to get the full
2 picture. You obviously haven't heard anything from the
3 defendants, nor my instruction on the law, nor the
4 parties' arguments as to how the law compares. So to the
5 extent you can, just let this information percolate. Have
6 some faith that the law will be fairly straightforward and
7 that the parties will be able to put this hodgepodge of
8 evidence together in a way that they think is meaningful
9 for each side and to help you ultimately resolve the case.
10 And with that, we will see you tomorrow morning at
11 8:30 a.m. All rise, please.

12 (Jury out at 5:32 p.m.)

13 THE COURT: If the parties would be seated. As
14 far as the deposition goes, you think you'll be done by
15 nine with the remaining portion of the deposition?

16 MS. BANNINK: So we're at 53:55 and it goes to
17 127.29.

18 MR. WEIDNER: 30 minutes, Your Honor.

19 THE COURT: All right. So we should be done by
20 nine. And then your Mr. Eiser will be your last witness;
21 is that right?

22 MS. BANNINK: I'm sorry?

23 THE COURT: Mr. Eiser will be your last witness?

24 MR. WEIDNER: I believe so, Your Honor.

25 THE COURT: You've got control over this much.

1 Do you contemplate calling anyone else in your
2 case-in-chief?

3 MR. WEIDNER: No, Your Honor.

4 THE COURT: Okay. Thank you. And so I would
5 anticipate you'll be done midmorning, maybe a little bit
6 after the break?

7 MR. WEIDNER: Yes, Your Honor.

8 THE COURT: All right. And does the County have
9 an estimate of what its remaining case will be? I know
10 you've been doing a lot through directs of witnesses
11 called adversely. But do you have an idea what the
12 remainder of your case will likely be?

13 MR. BOHL: It will not take long, Judge. While
14 some inspiration may come to us over the evening hours, I
15 currently contemplate calling only the expert witness.

16 THE COURT: All right. Understood. So it could
17 be that we'll have, unless there's some limited
18 rebuttal -- even with limited rebuttal we should have the
19 liability case to the jury after lunch. I assume you
20 haven't changed your response, you anticipate a fairly --

21 MS. MILLS: Well, I need to call Mr. Christensen
22 and I would need to call the plaintiffs; just very limited
23 on the plaintiffs, but for Mr. Christensen I planned on
24 calling him.

25 THE COURT: Well, you've complicated matters in

1 two ways. One is there were directs done of your client
2 and I had assumed that you were following that same
3 practice, since I wasn't advised that's the case. You're
4 not going to be able to refurrow the same ground. I can't
5 recall, did you ask any questions of your client?

6 MS. MILLS: Just probably three or four cross
7 questions, in particular.

8 THE COURT: Well, they're not cross, but I get
9 your point. I will allow you to put him back on the
10 stand. But you're going to have to be very crisp and
11 address areas not covered already. Are we clear?

12 MS. MILLS: Yeah.

13 THE COURT: All right. And I will allow you to
14 call the plaintiffs adversely, but again we're not going
15 to refurrow new ground.

16 MS. MILLS: I may not even call them. But at
17 this point I'm 75 percent thinking I will.

18 THE COURT: All right. Factoring that in, then
19 perhaps we won't get to instructions and to closings
20 tomorrow afternoon, but perhaps we will. So I think we
21 should arrive here at 8:15 tomorrow morning to address any
22 remaining proposed changes to the instructions, the
23 closing instructions on liability. Is that acceptable to
24 both sides?

25 MR. WEIDNER: Yes, Your Honor.

1 MR. CRANLEY: Yes.

2 MS. MILLS: Yes.

3 THE COURT: Very good. I will see you then at
4 8:15 to take up those issues and then we will proceed with
5 testimony at 8:30. Thank you all and we are adjourned for
6 the evening. You're free to move about as you wish.

7 (Adjourned at 5:36 p.m.)

8 ***

9 I, CHERYL A. SEEMAN, Certified Realtime and
10 Merit Reporter, in and for the State of Wisconsin, certify
11 that the foregoing is a true and accurate record of the
12 proceedings held on the 31st day of January, 2017, before
13 the Honorable William M. Conley, Chief Judge of the
14 Western District of Wisconsin, in my presence and reduced
15 to writing in accordance with my stenographic notes made
16 at said time and place.
17 Dated this 13th day of February, 2017.

18

19

/s/

20

Cheryl A. Seeman, RMR, CRR
Federal Court Reporter

21

22

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